Supreme Court, U.S.
FILED

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Case No. _____

**IN THE SUPREME COURT OF THE UNITED STATES**

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In re JASON F. MCGEE, Petitioner

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**MOTION FOR LEAVE TO FILE PETITION FOR MANDAMUS**

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**PETITION FOR WRIT OF MANDAMUS TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION**

**THE HONORABLE CARLTON L. KELL, SUPERIOR COURT JUDGE, COBB COUNTY, GEORGIA, IN HIS INDIVIDUAL CAPACITY**

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Honorable Judge Carlton L. Kell

## QUESTION PRESENTED

The Eleventh Circuit affirmed a District Court ruling that **ORDER**s of a Georgia Trial Court that supersede the Laws of Georgia and the OPINIONS of the Georgia Appellate Courts are valid. After Petitioner challenged a void ab initio **ORDER OF INCARCERATION**, the District Court alleged it "lacks subject matter jurisdiction under the Feldman-Rooker Doctrine".

If the rulings of the Eleventh Circuit and the District Court are not overturned, State Court Judges may consider the Rights guaranteed by the 14th Amendment of the United States Constitution to be nothing more than a suggestion.

Does the "Feldman-Rooker" Doctrine nullify the Constitution and the Laws of the United States?

## PARTIES TO THE PROCEEDING

In Case No. 09-15811-JJ 09-CV-1338-TWT, Petitioner was the Appellant and THE HONORABLE CARLTON L. KELL SUPERIOR COURT JUDGE, COBB COUNTY GEORGIA, IN HIS INDIVIDUAL CAPACITY, was the Appellee. App. V – Pg. 104a.

In Case No. 08-17063 08-CV-1433-TWT, Petitioner was the Appellant, THE HONORABLE CARLTON L. KELL SUPERIOR COURT JUDGE, COBB COUNTY GEORGIA, and Attorney Melvin Drukman were the Appellees. App. 3 – Pg. 167a.

The UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT is the respondent for the **PETITION FOR MANDAMUS**.

The UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION, the HONORABLE THOMAS W. THRASH is the respondent for the **PETITION FOR MANDAMUS**.

The HONORABLE CARLTON L. KELL SUPERIOR COURT JUDGE, COBB COUNTY GEORGIA, IN HIS INDIVIDUAL CAPACITY is the respondent for the **PETITION FOR MANDAMUS**.

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## MOTION FOR LEAVE TO FILE PETITION FOR MANDAMUS

Petitioner moves this Court for leave to file a petition for a writ of mandamus, under 28 U.S.C.A. § 1651, directed to the **UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**, the **UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION**, the **HONORABLE THOMAS W. THRASH** and the **HONORABLE CARLTON L. KELL SUPERIOR COURT JUDGE, COBB COUNTY GEORGIA, IN HIS INDIVIDUAL CAPACITY**.

"[T]here is a right in the public to know what occurs before the courts; there is a public interest in access to court records; and sunshine is the best disinfectant." *United States v. Hubbard*, 650 F.2d 293, 295 (208 US App. DC 399 1981) (internal quotes omitted). See *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597-98, 98 S. Ct. 1306, 55 L. Ed. 2d 570 (1977).

The Eleventh Circuit allowed the Honorable Judge Carlton L. Kell to ignore the United States Constitution, the Laws of the United States and the Laws of the State of Georgia under the guise of Contempt. App. A – Pg. 1a. App. F – Pg. 6a-8a. App. H – Pg. 10. App. I – Pg. 11a-12a. App. J – Pg. 13a-15a. App. K – Pg. 16a. App. M – Pg. 18a. App. N – Pg. 33a-50a. App. 1 – Pg. 139a–141a, 144a-150a. App. 2 – Pg. 163a-166a.

The District Court abused its discretion in alleging the Feldman-Rooker Doctrine allows the Honorable Judge Carlton L. Kell to ignore the United States Constitution, the Laws of the United States and the Laws of the State of Georgia under the guise of Contempt. App. C – Pg. 3a. App. D – Pg. 4a. App. F – Pg. 6a- 8a. App. H – Pg. 10a. App. L – Pg. 17a. App. N – Pg. 30a-44a, 48a-57a. App. O – Pg 60a-61a. App. Q – Pg. 68a-75a. App. R – Pg. 77a-78a. App. S – Pg. 80a-82a. App. W – Pg. 114a-116a. App. X – Pg. 120a-121a. App. Y – Pg. 124a-130a. App. 1 – Pg. 139a-141a, 144a-149a. App. 2 – Pg. 163a-166a. App. 3 – Pg. 170a-180a. App. 5 – Pg. 185a. App. 6 – Pg. 186a-190a. App. 7 – Pg. 191a. App. 8 – Pg. 192a-200a. App. 9 – Pg. 201a-202a. App. 10 – Pg. 204a-207a. App. 11 – Pg. 208a-210a.

After Petitioner removed a Contempt case - Judge Kell - in defiance of the United States Constitution and the Laws of the United States, issued an **ORDER OF INCARCERATION**. 28 U.S. C. 1446. App. F – Pg. 6a-8a. App. G - Pg. 9a. App. O – Pg. 60a-61a. App. Q – Pg. 69a-70a. App. R – Pg. 77a-78a. App. T – Pg. 84a. App. Y – Pg. 124a–130a. Petitioner was threatened with Arrest if he did not comply with UNLAWFUL **ORDER**s issued by Judge Kell under his own Authority. App. F – Pg. 6a-8a. App. H – Pg. 10a. App. V – Pg. 106a-107a. App. W – Pg. 111a. App. 3 – Pg. 176a–177a. App. 8 – Pg. 197a.

The excuses of the Eleventh Circuit and the District Court to justify the UNLAWFUL actions of Judge Kell fail to meet the basic requirement of

*Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923) or *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983). App. A – Pg 1a. App. C. – Pg. 3a. App. D – Pg. 4a. App. J – Pg. 14a-15a. "In both cases, the losing party in state court filed suit in federal court after the state proceedings ended, complaining of an injury caused by the state-court judgment and seeking review and rejection of that judgment." *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 291, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005).

> No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it.
> It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives. *United States v. Lee*, 106 U.S. 196, 220, 1 S.Ct. 240, 27 L.Ed. 171 (1882). App. F – Pg. 6a-8a. App. R – Pg. 77a-78a.

There is a Rebuttable Presumption that Case No. 09-15811-JJ was dismissed because the Petitioner pointed out Plain Errors of Law made by the

Eleventh Circuit and the District Court. App. N – Pg. 31a, 34a-35a, 45a-57a.

The Eleventh Circuit's failure to provide Petitioner with the District Court's Docket Sheet justifies the excuse - Petitioner "failed to file the record excerpts within the time fixed by the rules". App. A – Pg. 1a.

Petitioner moves this Court to restore the Integrity of the Judicial Process in the Eleventh Circuit, for every party appearing in a Court of Law within its jurisdiction.

Petitioner moves this Court to declare the **ORDER OF INCARCERATION** VOID as a matter of Law. App. F – Pg. 6a-8a.

Petitioner moves this Court to vacate the **ENTRY OF DISMISSAL** in Case No. 09-15811-JJ. App. A – Pg. 1a.

Petitioner moves this Court to remand Case No. 1:09-CV-1338-TWT to the District Court.

Petitioner moves this Court to vacate the OPINION of the Eleventh Circuit. App. J – Pg. 13a-15a.

Petitioner moves this Court to remand Case No. 1:08-CV-1433-TWT to the District Court.

> It is a settled rule of law, that upon an erroneous judgment, if there be a regular execution, the party may justify under it until the judgment is reversed; for an erroneous judgment is the act of the court...Where money is wrongfully and illegally exacted, it is

> received without any legal right or authority to receive it; and the law, at the very time of payment, creates the obligation to refund it. *Bank of the United States v. Bank of Washington*, 31 U.S. 8, 16, 19, 8 L. Ed. 299 (1832). App. C – Pg. 3a. App. D – Pg. 4a. App. F – Pg. 6a-8a. App. J – Pg. 14a-15a.

The remedy of mandamus is a drastic one, to be invoked only in extraordinary situations. *Will v. United States*, 389 U.S. 90, 95 (1967); *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 382-385, 74 S. Ct. 145, 98 L. Ed. 106 (1953); *Ex parte Fahey*, 332 U.S. 258, 259 (1947). As we have observed, the writ "has traditionally been used in the federal courts only `to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.'" *Will v. United States*, supra, at 95, quoting *Roche v. Evaporated Milk Assn.*, 319 U.S. 21, 26 (1943). And, while we have not limited the use of mandamus by an unduly narrow and technical understanding of what constitutes a matter of "jurisdiction," *Will v. United States*, supra, at 95, the fact still remains that "only exceptional circumstances amounting to a judicial 'usurpation of power' will justify the invocation of this extraordinary remedy." Ibid. *Kerr v. United States Dist. Court for Northern Dist. of Cal.*, 426 U.S. 394, 402, 96 S. Ct. 2119, 48 L. Ed. 2d 725 (1976).

## PETITION FOR WRIT OF MANDAMUS

The Supremacy Clause makes those laws "the supreme Law of the Land," and charges state courts with a coordinate responsibility to enforce that law according to their regular modes of procedure. "The laws of the United States are laws in the several States, and just as much binding on the citizens and courts thereof as the State laws are. . . . The two together form one system of jurisprudence, which constitutes the law of the land for the State; and the courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent. *Claflin v. Houseman*, 93 U.S. 130, 136-137, 23 L.Ed. 833 (1876); see *Minneapolis & St. Louis R. Co. v. Bombolis*, 241 U.S. 211, 222, 36 S.Ct. 595, 598, 60 L.Ed. 961 (1916) ([T]he governments and courts of both the Nation and the several States [are not] strange or foreign to each other in the broad sense of that word, but [are] all courts of a common country, all within the orbit of their lawful authority being charged with the duty to safeguard and enforce the right of every citizen without reference to the particular exercise of governmental power from which the right may have arisen, if only the authority to enforce such right comes generally within

> the scope of the jurisdiction conferred by the government creating them); Hart, The Relations Between State and Federal Law, 54 Colum.L.Rev. 489 (1954) ("The law which governs daily living in the United States is a single system of law); see also *Tafflin v. Levitt*, 493 U.S. 455, 469, 110 S.Ct. 792, 800, 107 L.Ed.2d 887 (1990) (SCALIA, J., concurring). *Howlett v. Rose*, 496 U.S. 356, 367-368, 110 S.Ct. 2430, 110 L.Ed.2d 332 (1990). App. N – Pg. 40a, 52a. App. R – Pg. 77a-78a.

"It cannot be presumed that any clause in the constitution is intended to be without effect". *Marbury v. Madison*, 5 U.S. 137, 174, 2 L. Ed. 60, 2 L. Ed. 2d 60 (1803). App. R – Pg. 77a-78a.

> The constitutional privilege of a State to assert its sovereign immunity in its own courts does not confer upon the State a concomitant right to disregard the Constitution or valid federal law. The States and their officers are bound by obligations imposed by the Constitution and by federal statutes that comport with the constitutional design. We are unwilling to assume the States will refuse to honor the Constitution or obey the binding laws of the United States. The good faith of the States thus provides an important assurance that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the

supreme Law of the Land." U. S. Const., Art. VI. *Alden et al. v. Maine*, 527 U.S. 706, 754-755, 119 S.Ct. 2240, 144 L. Ed. 2d 636 (1999). App. N – Pg. 36a-38a.

The suggestion that the act of Congress is not in harmony with the policy of the state, and therefore that the courts of the state are free to decline jurisdiction, is quite inadmissible because it presupposes what in legal contemplation does not exist. When Congress, in the exertion of the power confided to it by the Constitution, adopted that act, it spoke for all the people and all the states, and thereby established a policy for all. That policy is as much the policy of [the State] as if the act had emanated from its own legislature, and should be respected accordingly in the courts of the state. *Mondou v. New York, N.H. & H.R. Co.*, 223 U.S. 1, 57, 32 S. Ct. 169, 56 L. Ed. 327(1912); see *Miles v. Illinois Central R. Co.*, 315 U.S. 698, 703-704, 62 S. Ct. 827, 830-831, 86 L. Ed. 1129 (1942). App. A. – Pg. 1a. App. C. – Pg. 3a. App. D – Pg. 4a. App. J – Pg. 14a-15a.

"The Supreme Court has recognized that an individual has a liberty interest in being free from incarceration absent a criminal conviction". *Oviatt v. Pierce*, 954 F.2d 1470, 1474 (9th Cir. 1992) (citing *Baker v. McCollan*, 443 U.S. 137, 144, 99 S. Ct. 2689, 2694, 61 L.Ed.2d 433 (1979)). App. F – Pg. 6a-8a.

"The act to establish the judicial courts of the United States authorizes the supreme court 'to issue writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States.'" 28 U.S.C.A. § 1651. *Marbury v.Madison*, 5 U.S. 137, 173, 2 L. Ed. 60, 2 L. Ed. 2d 60 (1803).

## CITATIONS OF OPINIONS & ORDERS IN THE CASE

The **ENTRY OF DISMISSAL** of the Eleventh Circuit is unpublished and reproduced in App. A - Pg. 1a.

The **ORDER** denying Petitioner's Motion for Mandatory Judicial Notice is unpublished and reproduced in App. B – Pg. 2a.

The **ORDER** denying Petitioner's **MOTION FOR NEW TRIAL** is unpublished and reproduced in App. C – Pg. 3a.

The **ORDER** dismissing Petitioner's **COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF AND AN INDEPENDENT ACTION IN EQUITY** is unpublished and reproduced in App. D – Pg. 4a.

The **ORDER** denying Petitioner's Motion for Mandatory Judicial Notice is unpublished and reproduced in App. E – Pg. 5a.

The **ORDER OF INCARCERATION** is unpublished and reproduced in App. F -- Pg. 6a-8a.

The **ORDER** denying Petitioner's **NOTICE OF REMOVAL** is unpublished and reproduced in App.

G – Pg. 9a.

The **ORDER TO RECALL BENCH WARRANT** is unpublished and reproduced in App. H – Pg. 10a.

The "Denial of Petition(s) for Rehearing", **ON PETITION(S) FOR REHEARING AND PETITIONS(S) FOR REHEARING EN BANC**, is unpublished and reproduced in App. I – Pg. 11a-12a.

The **OPINION** of the Eleventh Circuit for Case No. 08-17063 is unpublished and reproduced in App. J – Pg. 13a-15a.

The **ORDER DISMISSING ABOVE-STYLED MATTER WITHOUT PREJUDICE** for Civil Action File No. 06-1-10115-49 is unpublished and reproduced in App. K – Pg. 16a.

The **ORDER DISMISSING ABOVE-STYLED MATTER WITHOUT PREJUDICE** for Civil Action File No. 07-1-10479-49 is unpublished and reproduced in App. L – Pg. 17a.

The **ORDER DISMISSING ABOVE-STYLED MATTER WITHOUT PREJUDICE** for Civil Action File No. 07-1-9310-49 is unpublished and reproduced in App. M – Pg. 18a.

## JURISDICTION

The United States Court of Appeals for the Eleventh Circuit issued a final judgment on January 5, 2010. App A - Pg. 1a. This court has jurisdiction to review the judgment pursuant to 28 U.S.C. § 1254 (1). This court has jurisdiction to issue a Writ of Mandamus pursuant to 28 U.S.C. § 1651(a).

## STATUTORY PROVISION INVOLVED

The Statutory Provisions involved are:

United States Constitution Amendment XIV App. 13 – Pg. 212a. 18 U.S.C. § 242 App. O – Pg. 60a-61a. 28 U.S.C. § 1254 App. 13 – Pg. 213a. 28 U.S.C. § 1257 App. 13 – Pg. 213a. 28 U.S.C. § 1331 App. 13 – Pg. 123a-124a. 28 U.S.C. § 1343 App. 13 – Pg. 214a. 28 U.S.C. § 1446 App. 13 – Pg. 214a-217a. 28 U.S.C. § 1651 App. 13 – Pg. 217a. 28 U.S.C. § 1738 App. 13 – Pg. 218a. 42 U.S.C. § 1983 App. 13 – Pg. 218a.

## RULE 20 3(a) STATEMENT

Petitioner's appeal to the Eleventh Circuit was "a clearly inadequate remedy." *Ex parte Fahey*, 332 U.S. 258, 260, 67 S. Ct. 1558, 91 L. Ed. 2041 (1947). See *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 288-90, 108 S. Ct. 1133, 99 L. Ed. 2d 296 (1988). App. A – Pg. 1a. App. I – Pg. 11a-12a. App. J – Pg. 13a-15a.

The alleged "Motion to Resume Custody and Child Support" was never filed by Attorney Melvin Drukman. App. 12 - Pg. 211a. Even if the "Motion to Resume Custody and Child Support" had been filed, most Georgia Family Law Attorneys know that you cannot LEGALLY have Custody and Contempt in the same case. App. O - Pg. 61a-62a.

Judge Kell is attempting to hold the Petitioner accountable for the Lies of Attorney Melvin Drukman. App. W – Pg. 112a. App. Y – Pg. 125a-

126a. App. 1 – Pg. 146a. App. 2 – Pg. 160a. App. 3 – Pg. 170a, 172a. App. 8 – Pg. 197a-199a. App. 10 – Pg. 204a-205a.

In a Court of Law, no party should ever have to hear: "Okay. Well, explain to me why I shouldn't have you taken into custody. **And don't give me a bunch of your pro se mumbo jumbo about the legalities of it.** Tell me why you haven't made the payments I ordered you to make." App. 8 – Pg. 197a.

The arguments of the Attorney General serve one purpose – to prove beyond any doubt that a LIE pays better in some Georgia Courts than the TRUTH does in the Federal Courts. App. N – Pg. 47a-49a. App. W – Pg. 112a-114a. App. X – Pg. 120a.

The Feldman-Rooker doctrine must fail in Case No. 1:09-CV-1338-TWT due to the Supremacy Clause. App. A – Pg. 1a. App. C – Pg. 3a. App. D – Pg. 4a. App. R – Pg. 77a-78a.

The Federal Courts could not accept the arguments of the Attorney General in Case No. 1:08-CV-1433-TWT without selectively applying the Full Faith and Credit Clause. 8 U.S.C. § 1257. 28 U.S.C. § 1738. App. 1 – Pg. 148a. App. 2 – Pg. 163a, 165a. App. 13 – Pg. 218a.

The Rooker-Feldman argument fails in Case No. 1:08-CV-1433-TWT because the case was not FINAL prior to the Federal Court rulings. 28 U.S.C. § 1257. App. K – Pg. 16a. App. M – Pg. 18a. App. 1 – Pg. 140a-141a. App. 2 – Pg. 164a.

"Federal courts hold no supervisory authority over state judicial proceedings and may intervene only to correct wrongs of constitutional dimension." *Smith v. Phillips* 455 U.S. 209, 221, 102 S. Ct. 940, 71 L. Ed. 2d 78 (1982). App. W – Pg. 115a-116a. App. 1 – Pg. 148a.-149a

Petitioner moves this Court of last resort to answer:

"[H]**ow he could LAWFULLY be in CONTEMPT of a State Court ORDER that is not in compliance with the Laws of the State.**" 28 U.S.C. § 1738. App. N – Pg. 48a. App. Y – Pg. 126a.

## STATEMENT OF THE CASE

> The *Rooker-Feldman* doctrine, we hold today, is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments. *Rooker-Feldman* does not otherwise override or supplant preclusion doctrine or augment the circumscribed doctrines that allow federal courts to stay or dismiss proceedings in deference to state-court actions. *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 284, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005).

After Petitioner filed a **NOTICE OF APPEAL**, he was threatened with immediate Arrest if he did not comply with an **ORDER** Judge Kell had no Legal Authority to enforce. App. 4 – Pg. 183a-184a. App. 5 – Pg. 185a. App. 8 – Pg. 197.

After Petitioner removed a case to the District Court, Judge Kell issued an **ORDER OF INCARCERATION** prior to the case being remanded. 28 U.S.C. 1446. App. F – Pg. 6a-8a. App. V – Pg. 104a-109a. App. W – Pg. 110a-117a. App. X – Pg. 118a-123a. App. Y – Pg. 124a-130a.

After Petitioner sought relief in the Federal Courts, the Rooker-Feldman Doctrine was the excuse offered to justify the Constitutional violations. App. D – Pg. 4a. App. J – Pg. 14a-15a.

If the void ab initio **ORDER OF INCARCERATION** is not VACATED, an **ORDER** of a State Trial Court Judge is the Law of the Land. App. F – Pg. 6a-8a. App. W – Pg. 111a. App. Y – Pg. 126a. App. 3 – Pg. 176a-178a. App. 8 – Pg. 197.

## REASONS FOR GRANTING PETITION

It is a basic tenet of "Our Federalism" that where federal and state law conflict, state law must yield. This principle is captured in Article VI of the Constitution, which reads: "This Constitution, and the Laws of the United States . . . shall be the supreme Law of the Land . . ., any Thing in the . . . Laws of any State to the Contrary notwithstanding." U.S. Const. art VI, cl. 2. Soon after the creation of our federal system, the Supreme Court explained that the Supremacy Clause was designed to ensure

that states do not "retard, impede, burden, or in any manner control" the execution of federal law. *McCulloch v. Maryland*, 17 US 310, 436, 17 U.S. (4 Wheat) 316, 4 L. Ed. 579 (1819); see also *Gibbons v. Ogden*, 22 U.S. 1, 211, 6 L. Ed. 23, 22 S. Ct. 62 (1824) (Marshall, C.J.).

"An excuse that is inconsistent with or violates federal law is not a valid excuse: The Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source. United States Constitution Article VI, Clause 2, 3. *Howlett v. Rose*, 496 U.S. 356, 371, 110 S. Ct. 2430, 110 L. Ed. 2d 332 (1990). App. A – Pg. 1a. App. F – Pg. 6a-8a. App. I – Pg. 11a-12a. App. J – Pg. 14a-15a. App. P – Pg. 63a-67a. App. R – Pg. 77a-78a. App. T – Pg. 83a-100a. App. U – Pg. 102a-103a.

If the District Court had adhered to the Opinions of the Eleventh Circuit, the alleged "want of prosecution" would be moot. App. A – Pg. 1a.

**JURISDICTION DOUBLE STANDARD**

How could the District Court have Subject Matter Jurisdiction under 28 U.S.C. § 1331 but not under the Feldman-Rooker Doctrine? App. A – Pg. 1a. App. C – Pg. 3a. App. D – Pg. 4a. App. N– Pg. 52a-54a.

**CHECKS AND BALANCES**

A court faced with a motion to dismiss a pro se complaint must read the complaint's allegations

expansively, *Haines v. Kerner*, 404 U.S. 519, 520-21 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972), and take them as true for purposes of deciding whether they state a claim. *Cruz v. Beto*, 405 U.S. 319, 322, 92 S. Ct. 1079, 31 L.Ed.2d 263 (1972). App. N – Pg. 54a.

If the Petitioner's allegations were taken as True, the Defendant(s) are required to answer the Petitioner's **COMPLAINT FOR DECLARATORY JUDG[E]MENT AND OTHER RELIEF AND AN INDEPENDENT ACTION IN EQUITY**. App. V – Pg. 104a-109a. App. 3 – Pg. 167a-182a.

If any of the allegations in the initial Pleadings were False, the Attorney General would have been negligent for not seeking Sanctions against the Petitioner. App. C – Pg. 3a. App. N – Pg. 56a.

The allegation of the Attorney General that Petitioner is attempting to sue the State of Georgia – to justify his intervention on behalf of Judge Kell – is betrayed by the Pleadings. App. T – Pg. 97a-98a. It is nothing more than an excuse to justify the Attorney General of Georgia asking the District Court to ignore Federal Law to justify Judge Kell's wrongdoing.

> When there is parallel state and federal litigation, *Rooker-Feldman* is not triggered simply by the entry of judgment in state court. This Court has repeatedly held that the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction. *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 292,

125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005) (internal quotations omitted). App. A – Pg. 1a. App. C – Pg. 3a. App. D – Pg. 4a. App. N – Pg. 52a-54a. App. V – Pg. 104a-109a. App. 3 – Pg. 167a-182a.

We have in this circuit a well-settled " mandate rule" obligating district courts to adhere closely to the dictates of our opinions. *See Barber v. International Bhd. of Boilermakers,* 841 F.2d 1067, 1070 (11th Cir.1988); *Litman v. Massachusetts Mut. Life Ins. Co.,* 825 F.2d 1506, 1511 (11th Cir.1987) (en banc), *cert. denied,* 484 U.S. 1006, 108 S.Ct. 700, 98 L.Ed.2d 652 (1988); *Piambino v. Bailey,* 757 F.2d 1112, 1119 (11th Cir.1985), *cert. denied,* 476 U.S. 1169, 106 S.Ct. 2889, 90 L.Ed.2d 976 (1986); *Wheeler v. City of Pleasant Grove,* 746 F.2d 1437, 1440 & n. 2 (11th Cir.1984); *Westbrook v. Zant,* 743 F.2d 764, 770 (11th Cir.1984); *Dorsey v. Continental Casualty Co.,* 730 F.2d 675, 678-79 (11th Cir.1984); *United States v. Williams,* 728 F.2d 1402, 1405-06 (11th Cir.1984); *Baumer v. United States,* 685 F.2d 1318, 1321 (11th Cir.1982).[4] This rule derives from the law of the case doctrine, *see Litman,* 825 F.2d at 1511; *Piambino,* 757 F.2d at 1120, and simply means that "a district court is not free to deviate from the appellate court's mandate." *Barber,* 841 F.2d at 1070 (quoting *Wheeler,* 746 F.2d at 1440 n. 2). An issue decided by an appellate court

> must be followed in all subsequent proceedings "unless the presentation of new evidence or an intervening change in the controlling law dictates a different result, or the appellate decision is clearly erroneous and, if implemented, would work a manifest injustice." *Pelletier v. Zweifel*, 987 F.2d 716, 718 (11th Cir. 1993).

A state court decision is "contrary to" clearly established law if the court arrived at a conclusion opposite to one reached by the Supreme Court on a question of law, or if the state court confronted facts that are "materially indistinguishable" from relevant Supreme Court precedent but arrived at a different result. *Williams v. Taylor*, 529 U.S. 362, 405, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000). A state court decision is an "unreasonable application" of clearly established law if the state court unreasonably extends or fails to extend a clearly established legal principle to a new context. Id. at 407. App 3 – Pg. 170a-180a. App. 6 – Pg. 186a-190a.

There is a Rebuttable Presumption that the Rooker-Feldman doctrine is misapplied so the District Court(s) of the Eleventh Circuit will not have to address Constitutional Violations committed in State Courts. App. D – Pg. 4a. App. J – Pg. 14a-15a.

The District Court reads the Complaint, waits for the Attorney General to file a **MOTION FOR DISMISSAL** - alleging lack of Jurisdiction due to

the Rooker-Feldman Doctrine and dismisses it. App. D – Pg. 4a. App. T – Pg. 83a-100a. App. U – Pg. 102a-103a.

## CONCLUSION

The motion for leave to file petition for writ of mandamus should be granted.

The petition for writ of mandamus should be granted.

Respectfully Submitted,

Jason F. McGee, Pro Se
290 Christopher Drive
Hiram, GA 30141
678 662-3905

# APPENDIX

## APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 09-15811-JJ
[Filed January 5, 2010]

Jason F. McGee, Plaintiff-Appellant,
versus
The Honorable Carlton L. Kell,
Superior Court Judge, et al, Defendants-Appellees.

Appeal from the United States District Court
for the Northern District Of Georgia

ENTRY OF DISMISSAL

Pursuant to 11th Cir.R.42-2(c), this appeal is hereby dismissed for want of prosecution because appellant has failed to file the record excerpts within the time fixed by the rules, effective this 5th day of January, 2010.

John Ley
Acting Clerk of Court

By Debbie Cordell
Deputy Clerk

FOR THE COURT - BY DIRECTION

ORD-40

## APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JASON F. MCGEE,
Plaintiff,
v.
CIVIL ACTION FILE
NO. 1:09-CV-1338-TWT
THE HONORABLE CARLTON L. KELL Superior Court Judge, Cobb County Georgia, in his individual capacity,
Defendant.

ORDER

This is a pro se civil rights action against a Cobb County Superior Court Judge arising out of Plaintiff's child support proceedings. The case is closed. The Plaintiff's Motion for Mandatory Judicial Notice [Doc. 14] is DENIED.

SO ORDERED, this 18 day of November, 2009.

/s/Thomas W. Thrash
THOMAS W. THRASH, JR.
United States District Judge

## APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JASON F. MCGEE,
Plaintiff,
v.
CIVIL ACTION FILE
NO. 1:09-CV-1338-TWT

THE HONORABLE CARLTON L. KELL Superior Court Judge, Cobb County Georgia, in his individual capacity,
Defendant.

ORDER

This is a pro se civil suit against a Cobb County Superior Court Judge. It was dismissed as an impermissible collateral attack upon the judge's decisions in the Plaintiff's divorce and child support proceedings. The Plaintiff's Motion for New Trial [Doc. 10], Third Motion for Mandatory Judicial Notice [Doc. 12] and Fourth Motion for Mandatory Judicial Notice [Doc. 13] are DENIED. The Plaintiff is placed on notice that future filings of frivolous motions will result in Rule 11 sanctions.

SO ORDERED, this 15 day of October, 2009.

/s/Thomas W. Thrash
THOMAS W. THRASH, JR.
United States District Judge

## APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JASON F. MCGEE,
Plaintiff,
v.
THE HONORABLE CARLTON L. KELL Superior Court Judge, Cobb County Georgia, in his individual capacity,
Defendant.

CIVIL ACTION FILE
NO. 1:09-CV-1338-TWT

ORDER

This is a pro se prisoner civil rights action against a Cobb County Superior Court Judge. It is before the Court on the Defendant's Motion to Dismiss [Doc. 3]. This action is an impermissible collateral attack upon Judge Kell's decisions in the Plaintiff's divorce and child support proceedings. The Court lacks subject matter jurisdiction under the Feldman-Rooker doctrine. The Defendant's Motion to Dismiss is GRANTED. The Plaintiff's Motion for Mandatory Judicial Notice [Doc. 6] is DENIED.

SO ORDERED, this 3 day of September, 2009.

s/Thomas W. Thrash
THOMAS W. THRASH, JR.
United States District Judge

## APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JASON F. MCGEE,
Plaintiff,
v.
CIVIL ACTION FILE
NO. 1:09-CV-1338-TWT

THE HONORABLE CARLTON L. KELL Superior Court Judge, Cobb County Georgia, in his individual capacity,
Defendant.

ORDER

This is a pro se civil rights action against a Cobb County Superior Court Judge. It is before the Court on the Plaintiff's Motion for Mandatory Judicial Notice [Doc.5] which is DENIED.

SO ORDERED, this 28 day of August, 2009.

s/Thomas W. Thrash
THOMAS W. THRASH, JR.
United States District Judge

## APPENDIX F

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

DEBBIE D. MCGEE
Plantiff.
v.
JASON F. MCGEE
Defendant

CIVIL ACTION
FILE NO. 08-1-10450-49

### ORDER OF INCARCERATION

Plaintiff filed a Motion for Contempt alleging that Defendant failed to pay child support as ordered by this Court. Additionally, Plaintiff complained that Defendant failed to provide an insurance card for the children. Plaintiff also requested attorney's fees for having to bring this action.

On February 20, 2009, the Court issued an order finding that Defendant was required to pay child support in the amount of $1,576.00 per month based on the original divorce decree. The Court further found that total amount required for the period of January through June 2008 was $9,450.00 while the actual payment made by Defendant was only $4,350.00. Therefore the Court concluded that the Defendant had failed to pay $5,100.00 in child support between January and June 2008. The order stated that the Defendant was found to be in willful contempt and Defendant was ordered to pay the $5,100 00 with 30 days of the order, which was nuc pro tunc to February 15, 2009. The Court also awarded the Plaintiff $750.000 in attorneys fees to

be paid within 30 days of the order, making a total payment due of $5850.00, to be paid directly to Plaintiff's counsel, Melvin Drukman. The Order stated that the failure to make the payments as ordered "will result in an order for Defendant's incarceration being issued."

The Order granting Plaintiff's Motion to Compel and Motion for Attorney's Fees dated February 20, 2009, having been read and considered, along with the Affidavit of Melvin Drukman stating that Defandant has not paid the $5850.00 as of March 23, 2009, it is hereby ORDERED:

Defendant's failure to pay the amount due constitutes a willful violation of this Court's order. Defendant is hereby found in willful contempt of this Court's Order dated February 20, 2009.

The Sheriff of Cobb County or his lawful deputy, the Sheriff of any County of the State of Georgia or his lawful deputy, and any and all other law enforcement officers of the State of Georgia, are hereby ordered and directed to immediately arrest the Defendant, Jason McGee and incarcerate him therein for continued willful violations of this Court's order until such time as he purges himself of such willful contempt by payment of the amount of $5,850.00. According to court records, Mr. McGee's home address is 2152 Caneridge Drive, SW, Marietta, Georgia 30064; however, on a recent document filed with the Court Mr. McGee listed his address as 290 Christopher Drive, Hiram, Georgia 30141. In December 2008, Mr. McGee was served with a complaint at his place of employment, T - Mobile, One Ravinia Drive, Atlanta, Georgia 30346,

The Sheriff of Cobb County is to notify this Court of the Defendant's arrest.

Said sum shall be made payable to the Sheriff of Cobb County, by cash, certified check, cashiers check or money order, and shall be delivered by the Sheriff to Melvin Drukman, Law Offices of Melvin Drukman, P.C., 1756 Century Boulevard, Suite B, Atlanta, GA 30345 . Upon the payment of the purge amount by Defendant, the Sheriff of Cobb County or his lawful deputies are authorized to release Defendant from incarceration.

SO ORDERED this 25th day of March 2009.

/S/_____
C. LaTain Kell, Judge
Superior Court of Cobb County
Cobb Judicial Circuit

## APPENDIX G

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF**
**GEORGIA**
**ATLANTA DIVISION**

**DEBBIE D. MCGEE,**
**Plaintiff,**
**v.**

**Civil Action No.**
**1:09-CV-690-TWT**

**JASON F. MCGEE,**
**Defendant.**

### ORDER

This is a contempt action arising out of a domestic relations case pending in the Superior Court of Cobb County, Georgia. It was wrongfully removed. It is hereby remanded to the Superior Court of Cobb County for lack of subject matter jurisdiction.

SO ORDERED, this 21 day of April, 2009.

/s/Thomas W. Thrash
THOMAS W. THRASH, JR.
United States District Judge

## APPENDIX H

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

DEBBIE D. MCGEE
Plaintiff.
v.
JASON F. MCGEE
Defendant.

CIVIL ACTION
FILE NO. 08-1-10450-49

**ORDER TO RECALL BENCH WARRANT**

On March 25, 2009, this Court issued an Order of Incarceration due to Defendant's failure to pay $5,100.00 in child support and $750.00 in attorney's fees as ordered by the Court on February 20, 2009. On May 4, 2009, an individual on behalf of Defendant appeared at the Cobb County Sheriff's Office with a certified check in the amount of $5,850.00 for payment of the child support and attorney's fees. The Defendant has now purged himself of willful contempt, and the Order of incarceration dated March 25, 2009, is HEREBY SET ASIDE.

SO ORDERED this 4th day of May, 2009.

/S/_____
C. LATAIN KELL
Superior Court Judge
Cobb Judicial Circuit

## APPENDIX I

## IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 08-17063-EE

JASON F. MCGEE,

Plaintiff-Appellant,

versus

THE HONORABLE CARLTON L. KELL,
Superior Court Judge, Cobb County,
Georgia,

Defendant,

MELVIN DRUKMAN,

Defendant-Appellee.

On Appeal from the United States District Court for the Northern District of Georgia

BEFORE : CARNES, WILSON and KRAVITCH, Circuit Judges.

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

PER CURIAM:
The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en

banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/S/ Phyllis Kravitch
UNITED STATES CIRCUIT JUDGE

ORD-42
(12/01)

**APPENDIX J**

[DO NOT PUBLISH]

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
JUNE 8, 2009
THOMAS K. KAHN
CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 08-17063
Non-Argument Calendar

D. C. Docket No. 08-01433-CV-TWT-1

JASON F. MCGEE,

Plaintiff-Appellant,

versus

THE HONORABLE CARLTON L. KELL,
Superior Court Judge, Cobb County,
Georgia,

Defendant,

MELVIN DRUKMAN,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

(June 8, 2009)

Before CARNES, WILSON, and KRAVITCH, Circuit Judges.

PER CURIAM:

Jason F. McGee, acting without the benefit of counsel, brought this action in district court seeking a declaratory judgment and other equitable relief from certain orders entered by Judge Carlton L. Kell of the Superior Court of Cobb County, Georgia. McGee alleged that these orders, which found that McGee was in contempt of the state court's order for child support and ordered McGee to pay the unpaid support and to make payments necessary to clear title on certain real property, were invalid because they were based upon unsworn statements and did not properly set forth the court's findings of fact and conclusions of law. The district court dismissed McGee's complaint, finding that it "lacks subject matter jurisdiction to review and reverse state court orders and judgments" under the Rooker-Feldman doctrine. See Rooker v. Fid. Trust Co., 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1986).

McGee appeals, asserting that the district court erred in finding that it lacked jurisdiction to consider his complaint. We disagree. The Rooker-Feldman doctrine recognizes that federal courts, other than the Supreme Court, do not have jurisdiction to review final state court decisions. Feldman, 460 U.S. at 476. More recently, the Supreme Court

instructed that the doctrine applies only to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." Exxon Mobil Corp. v.Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005).

The instant case fits squarely within the admittedly narrow confines of the Rooker-Feldman doctrine. McGee was a "state-court loser" in his divorce proceeding and child custody dispute who is now "complaining of injuries caused by" the allegedly improper state court contempt orders entered by Judge Kell. See id. The district court, therefore, properly found that it had no jurisdiction to consider McGee's claims. For this reason, we AFFIRM.

## APPENDIX K

**IN THE SUPERIOR COURT OF COBB COUNTY STATE OF GEORGIA**

Jason McGee
Plantiff,
v.
Debbie McGee
Defendant.

CIVIL ACTION
FILE NO. 06-1-10115-49

**ORDER DISMISSING ABOVE-STYLED MATTER WITHOUT PREJUDICE**

The above-styled matter, having been duly called during this Court's September 17, 2009 Peremptory Calendar, and no parties or their representatives having appeared to answer said call, this action is hereby dismissed without prejudice for want of prosecution pursuant to Uniform Superior Court Rule 20.

SO ORDERED, this 1st day of October 2009.

/S/_____
C. LaTain Kell, Judge
Superior Court of Cobb County
Cobb Judicial Circuit

## APPENDIX L

**IN THE SUPERIOR COURT OF COBB COUNTY STATE OF GEORGIA**

Jason McGee
Plantiff,
v.
Melvin Drukman,
Debbie McGee
Defendant.

CIVIL ACTION
FILE NO. 07-1-10479-49

**ORDER DISMISSING ABOVE-STYLED MATTER WITHOUT PREJUDICE**

The above-styled matter, having been duly called during this Court's September 17, 2009 Peremptory Calendar, and no parties or their representatives having appeared to answer said call, this action is hereby dismissed without prejudice for want of prosecution pursuant to Uniform Superior Court Rule 20.

SO ORDERED, this 1st day of October 2009.

/S/_____
C. LaTain Kell, Judge
Superior Court of Cobb County
Cobb Judicial Circuit

## APPENDIX M

**IN THE SUPERIOR COURT OF COBB COUNTY STATE OF GEORGIA**

Debbie McGee
Plaintiff,
v.
Jason McGee
Defendant.

CIVIL ACTION
FILE NO. 07-1-9310-49

**ORDER DISMISSING ABOVE-STYLED MATTER WITHOUT PREJUDICE**

The above-styled matter, having been duly called before this Court's September 17, 2009 Peremptory Calendar, and no parties or their representatives having appeared to answer said call, this action is hereby dismissed without prejudice for want of prosecution pursuant to Uniform Superior Court Rule 20.

SO ORDERED, this 1st day of October, 2009.

/S/_____
C. LaTain Kell, Judge
Superior Court of Cobb County
Cobb Judicial Circuit

## APPENDIX N

Case No. 09-15811-JJ

**IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**

JASON F. MCGEE,
Plaintiff-Appellant,
v.
THE HONORABLE CARLTON L. KELL
SUPERIOR COURT JUDGE,
COBB COUNTY GEORGIA, in his
Individual Capacity
Defendant-Apellee.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION**

CASE NO. 09-15811-JJ

**APPELLANT'S OPENING BRIEF**

Jason F. McGee, Pro Se

**NO ORAL ARGUMENT REQUESTED**

Case No. 09-15811-JJ

**IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**

---

JASON F. MCGEE,
Plaintiff-Appellant,
v.
THE HONORABLE CARLTON L. KELL
SUPERIOR COURT JUDGE,
COBB COUNTY GEORGIA, in his
Individual Capacity
Defendant-Apellee.

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**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION**

Case No. 09-15811-JJ

---

**APPELLANT'S OPENING BRIEF**

---

Jason F. McGee, Pro Se

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT**

Jason McGee pursuant to Federal Rules of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1, hereby certify that the following entities and persons have an interest in the outcome of this appeal:

Attorney General Thurbert E. Baker
Honorable Judge Joan Bloom
Honorable Judge James G. Bodiford
Attorney Carin Burgess
Attorney Melvin Drukman
Deputy Attorney General Dennis R. Dunn
Honorable Judge Robert E. Flournoy, III
State Bar of Georgia
Honorable Judge Adele Grubbs
Chief Judge S. Lark Ingram
Honorable Judge George H. Kreeger
Debbie McGee
Honorable Judge Kenneth O. Nix
Senior Assistant Attorney General Stefan Ritter
Honorable Judge Dorothy Robinson
Honorable Judge J. Stephen Schuster
Honorable Judge Mary E. Staley

Respectfully Submitted,

/S/_____
Jason F. McGee, Pro Se

## STATEMENT REGARDING ORAL ARGUMENT

Jason F. McGee, pursuant to Federal Rules of Appellate Procedure 34 (a) and Eleventh Circuit Rule 34-3, does not request an Oral Argument.

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## STATEMENT OF JURISDICTION

The district court has Subject Matter Jurisdiction pursuant to 28 U.S.C. § 1331.

The district court has Subject Matter Jurisdiction based upon Federal Question Jurisdiction pursuant to 28 U.S.C. § 1331.

The district court has original jurisdiction pursuant to 28 U.S.C. § 1343.

The district court has Subject Matter Jurisdiction pursuant to § 1 of the 14th Amendment of the United States Constitution.

The district court has Subject Matter Jurisdiction pursuant to 42 U.S.C. § 1983.

This court has Appellate Jurisdiction pursuant to 28 U.S.C. § 1291.

The district court entered an **ORDER** dismissing the **COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF AND AN INDEPENDENT ACTION IN EQUITY** on September 3, 2009. Doc. 8 – Pg. 1.

The district court entered an **ORDER** on October 16, 2009 denying Mr. McGee's **MOTION FOR NEW TRIAL**. Doc. 15 – Pg. 1.

Mr. McGee filed a **NOTICE OF APPEAL** pursuant to Fed. R. App. P. 3 and 4 on November 12, 2009. Doc. 16 – Pg. 1.

## STATEMENT OF THE ISSUE

Is a void ab initio **ORDER OF INCARCERATION** issued by Judge Kell superior

to the United States Constitution and the Laws of the United States? Doc. 1 – Pg. 4-5. Doc. 1-3 – Pg. 1-7. Doc. 1-4 – Pg. 1-2. Doc. 1-5 – Pg. 1-3. Doc. 6 – Pg. 2-3. Doc. 8 – Pg. 1. Doc. 10 – Pg. 2-3. Doc. 12 – Pg. 2-3.

Did this court (En Banc) error in affirming the district court ruling that it did not have Subject Matter Jurisdiction in Case No. 08-17063 under the Rooker-Feldman Doctrine? Doc. 3-3 - Pg. 2-4. Doc. 6-2 – Pg. 3. Doc. 12-2 – Pg. 13, 15. Doc. 14-2 – Pg. 1, 5.

Did the district court error in using Feldman-Rooker doctrine to deny Subject Matter Jurisdiction? Doc. 1 - Pg. 1-7. Doc. 8 – Pg. 1. Doc. 15 – Pg. 1.

## STATEMENT OF THE CASE

Mr. McGee, once again, is asking this court to **REVERSE** a district court ruling for an UNLAWFUL **ORDER** issued by Judge Kell under his own authority under the color of law. Doc. 1-5 – Pg. 1-3. Doc. 3-3 – Pg. 2-4. Doc. 13-2 – Pg. 1-9.

On March 12, 2009, Mr. McGee filed a **MOTION FOR NEW TRIAL** that moved the Superior Court of Cobb County Georgia to set aside the **ORDER** entered on February 23, 2009 in Civil Action File No. 08-1-10450-49. Doc. 1-2 – Pg. 1. Uniform Superior Court Rule 41, 41.1.

On March 13, 2009, Mr. McGee removed Civil Action File No. 08-1-10450-49 from the Superior Court of Cobb County Georgia to the district court in Case No. 1-09-CV-0690-TWT. Doc. 1-3 – Pg. 1-7. Doc. 1-4 – Pg. 1-2. Doc. 1-6 – Pg. 1-2. Doc. 1-8 – Pg. 1. Doc. 3-2 – Pg. 2-3.

On March 13, 2009, Mr. McGee filed a copy of **NOTICE OF FILING A NOTICE OF REMOVAL** in Civil Action File No. 08-1-10450-49 in the Superior Court of Cobb County Georgia. Doc. 1-4 – Pg. 1-2.

On April 21, 2009, the district court issued an **ORDER** alleging that:

> This is a contempt action arising out of a domestic relations case pending in the Superior Court of Cobb County, Georgia. It was wrongfully removed. It is hereby remanded to the Superior Court of Cobb County for lack of jurisdiction of subject matter. SO ORDERED, this 21 day of April 2009. Doc. 1-8 – Pg. 1.

On September 3, 2009, the district court entered an **ORDER** dismissing the **COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF AND AN INDEPENDENT ACTION IN EQUITY**. Doc. 8 – Pg. 1.

On October 16, 2009, the district court entered an **ORDER** denying Mr. McGee's **MOTION FOR NEW TRIAL**. Doc. 15 – Pg. 1.

On November 12, 2009, Mr. McGee filed a **NOTICE OF APPEAL** pursuant to Fed. R. App. P. 3 and 4. Doc. 16 – Pg. 1.

## STATEMENT OF THE FACTS

Mr. McGee made it clear to the Superior Court of Cobb County Georgia that "removal is effective immediately upon filing per Title 28, United States Code, Section 1446(e)" and "the state court shall

proceed no further unless and until the case is remanded". Doc. 1-4 – Pg. 2. Doc. 1-6 – Pg. 1-2.

Mr. McGee made it clear to Judge Kell that "removal is effective immediately upon filing per Title 28, United States Code, Section 1446(e)". Doc. 1-4 – Pg. 2. Doc. 1-6 – Pg. 1-2.

On March 25, 2009, Judge Kell issued an **ORDER OF INCARCERATION** in Civil Action File No. 08-1-10450-49 in the Superior Court of Cobb County Georgia. Doc. 1-5 – Pg. 1-3.

On April 7, 2009, Mr. McGee filed a copy of a **NOTICE OF INTENT TO FILE A LAWSUIT** in Civil Action File No. 08-1-10450-49 in the Superior Court of Cobb County Georgia. Doc. 1-6 – Pg. 1-9.

On April 7, 2009, Mr. McGee filed a copy of a **MOTION FOR DECLATORY JUDGMENT AND INJUNCTIVE RELIEF** in Civil Action File No. 08-1-10450-49 in the Superior Court of Cobb County Georgia. Doc. 1-7 – Pg. 1-7.

On May 4, 2009, the sum of $5850.00 was paid to the Cobb County Sherriff's Office for Attorney Melvin Drukman. Doc. 1-9 – Pg. 1. Doc. 3-2 – Pg. 3.

On May 5, 2009, Judge Kell entered an **ORDER TO RECALL BENCH WARRANT** in Civil Action File No. 08-1-10450-49 in the Superior Court of Cobb County Georgia. Doc. 1-9 – Pg. 1. Doc. 3-2 – Pg. 3.

On June 8, 2009, this court affirmed the district court "had no jurisdiction to consider Mr. McGee's claims" of "the allegedly improper state court contempt orders entered by Judge Kell". Doc. 3-3 – Pg. 4.

On September 4, 2009, a **NOTICE** was filed the

Superior Court of Cobb County Georgia requiring each party to announce the status of their case in Civil Action No. 06110115-49, 07110479-49 and 07109310-49. Doc. 12-2 – Pg. 13-15.

On October 1, 2009, Judge Kell dismissed Civil Action No. 06110115-49, 07110479-49 and 07109310-49. Doc. 14-2 – Pg. 1, 3, 5.

The Record shows that a **FINAL** state-court judgment was not "rendered before the district court proceedings commenced" as Alleged by this court. Doc. 3-3 – Pg. 3. Doc. 14-2 – Pg. 1, 5.

There was no point in Mr. McGee showing up in the Superior Court of Cobb County Georgia to challenge an **Alleged FINAL** "state court decision" affirmed by this court. Doc. 3-3 – Pg. 3-4. Doc. 14-2 – Pg. 1, 5.

In affirming the district court in Case No. 08-17063, this court placed an **ORDER** of Judge Kell above the Laws of the State of Georgia and the written **OPINION**s of the Georgia Court of Appeals and the Supreme Court of Georgia. Fed. R. Civ. P. 11 (b)(3). Doc. 3-3 – Pg. 2-4. Doc. 13-2 – Pg. 1-9.

The letter to Mr. McGee from Mr. Kappelhoff (by Mr. Harrell) suggests the Civil Rights Division is more concerned about alleged Constitutional Rights violations involving "excessive physical force or sexual abuse by law enforcement officers" than deprivation of Constitutional Rights under **ILLEGAL ORDER**s issued by State Court Judges under the color of law. Doc. 1-5 –Pg. 1-3. Doc. 12-2 – Pg. 12.

## SUMMARY OF THE ARGUMENT

Judge Kell is "bound by obligations imposed by the Constitution and by federal statutes that comport with the constitutional design". Alden et al. v. Maine, 527 U.S. 706, 755, 119 S.Ct. 2240, 144 L.Ed.2d 636 (1999). The arguments of the Attorney General of Georgia asking a Federal Court to uphold a **void ab initio ORDER OF INCARCERATION** are a war against the United States Constitution.

Judge Kell confirmed this court committed a "plain" error after it affirmed the district court's ruling in Case No. 08-17063. The allegation that Mr. McGee asked the district court to overturn a **FINAL** ruling on his Custody case is wrong in both Fact and Law. There is a rebuttable presumption that the United States Constitution, the Laws of the United States and the Laws of the State of Georgia were ignored because of the Title and Status of the Plaintiff and Defendant(s). This court has a duty to apply and enforce the Laws of Georgia as the highest court in the State of Georgia would.

The district court erred in applying an "incorrect legal standard" to deny Subject Matter Jurisdiction under the "Feldman-Rooker" doctrine.

## STANDARD OF REVIEW

We review de novo a district court's determination that it lacks subject-matter jurisdiction. Chepstow Ltd. v. Hunt, 381 F.3d 1077, 1080 (11th Cir. 2004). See also Parise v. Delta Airlines, Inc., 141 F.3d 1463, 1465 (11th Cir. 1998).

We review de novo questions concerning a district court's ruling on a motion filed pursuant to Rule

12(b)(6) of the Federal Rules of Civil Procedure. Hill v. White, 321 F.3d 1334, 1335 (11th Cir. 2003).

We review a district court's application of law to the facts de novo. Whitley v. United States, 170 F.3d 1061, 1068 (11th Cir. 1999) (citing Reich v. Davis, 50 F.3d 962, 964 (11th Cir. 1995)).

We "review legal conclusions de novo and findings of fact for clear error". Mamone v. United States, 559 F.3d 1209, 1210 (11th Cir. 2009). See also Wexler v. Anderson, 452 F.3d 1226, 1230 (11th Cir. 2006).

We review rulings on post-judgment motions, including motions for new trials under the abuse of discretion standard. Green v. Union Foundry Co., 281 F.3d 1229, 1233 (11th Cir. 2002); Jones v. CSX Transp., 287 F.3d 1341, 1344 (11th Cir. 2002); Fondren v. Allstate Ins. Co., 790 F.2d 1533, 1534 (11th Cir. 1986) (citation omitted).

## ARGUMENT

**Is a void ab initio ORDER of Judge Kell superior to the United States Constitution and the Laws of the United States?**

"States and their officers are bound by obligations imposed by the Constitution and by federal statutes that comport with the constitutional design". Alden et al. v. Maine, 527 U.S. 706, 755, 119 S.Ct. 2240, 144 L.Ed.2d 636 (1999). Doc. 1-3 – Pg. 1-7. Doc. 1-4 – Pg. 1-2. Doc. 6 – Pg. 2-3.

> When there is a substantial showing that the exertion of state power has overridden private rights secured by that Constitution, the subject is

> necessarily one for judicial inquiry in an appropriate proceeding directed against the individuals charged with the transgression. To such a case the federal judicial power extends (article 3, § 2), and, so extending, the court has all the authority appropriate to its exercise. Accordingly, it has been decided in a great variety of circumstances that, when questions of law and fact are so intermingled as to make it necessary, in order to pass upon the federal question, the court may, and should, analyze the facts. Even when the case comes to this Court from a state court, this duty must be performed as a necessary incident to a decision upon the claim of denial of federal right. Sterling v. Constantin, 287 U.S. 378, 398, 53 S.Ct. 190, 77 L.Ed. 375 (1932). Doc. 1-3 – Pg. 1-7. Doc. 1-4 – Pg. 1-2. Doc. 1-5 – Pg. 1-3. Doc. 3-2 – Pg. 3.

If Judge Kell's intent was to force Mr. McGee to comply with an **UNLAWFUL ORDER** - without warring against the Constitution - all he had to do was wait until Case No. 1-09-CV-0690-TWT was remanded back to the Superior Court of Cobb County Georgia prior to entering his **ORDER OF INCARCERATION**. Doc. 1 – Pg. 5. Doc. 1-5 – Pg. 1-3. Doc. 1-8 – Pg. 1. By issuing an **ORDER OF INCARCERATION**, on a case removed to a Federal Court, Judge Kell showed a blatant disregard for the United States Constitution and the Laws of the United States. Doc. 1-5 – Pg. 1-3. Doc. 6 – Pg. 2-3. Doc. 12 – Pg. 2-3.

**AN UNCONSTITUTIONAL ACT**

"An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed". Norton v. Shelby County, 118 U.S. 425, 442, 6 S.Ct. 1121, 30 L.Ed. 178 (1886). Doc. 1-5 – Pg. 1-3. Doc. 1-6 – Pg. 2, 5-6. Doc. 10 - Pg. 2-3.

> Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that, in the administration of the criminal law, the end justifies the means-to declare that the government may commit crimes in order to secure the conviction of a private criminal-would bring terrible retribution. Against that pernicious doctrine this court should resolutely set its face. Olmstead v. United States, 277 U.S. 438, 485, 48 S.Ct. 564, 72 L.Ed. 944 (1928). Doc.1-3 – Pg. 2-4, 6-7. Doc. 1-5 – Pg. 1-3. Doc. 1-6 – Pg. 2-8. Doc 3-2 – Pg. 3, 15-19. Doc. 10 – Pg. 2-3.

Where a court has jurisdiction, it has a right to

decide every question which occurs in the cause; and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other Court. But, if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal, in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers.

This distinction runs through all the cases on the subject; and it proves, that the jurisdiction of any Court exercising authority over a subject, may be inquired into in every Court, when the proceedings of the former are relied on and brought before the latter by the party claiming the benefit of such proceedings. Elliot v. Piersol, 26 U.S. 328, 340-341, 1 Pet. 328, 7 L.Ed. 164 (1828). See Pennoyer v. Neff, 95 U.S. 714, 732-33, 24 L.Ed. 565 (1877). Doc. 1-5 – Pg. 1-3. Doc. 3-2 – Pg. 3.

"It is not the function of our Government to keep the citizen from falling into error; it is the function of the citizen to keep the Government from falling into error". American Communication Assn., v. Douds, 339 U.S. 382, 442-43, 70 S.Ct. 674, 94 L.Ed. 925 (1950). Doc. 1-3 – Pg. 3-4, 6-7. Doc. 1-6 – Pg. 1-8. Doc. 3-3 – Pg. 3-4. Doc. 7 – Pg. 1. Doc. 8 – Pg. 1. Doc. 12-2 – Pg. 13, 15. Doc. 14-2 – Pg. 1, 5. Doc. 15 – Pg. 1. Doc. 18 – Pg. 1.

**ACTUAL CASE OR CONTROVERSY**

The argument of Judge Kell there is no "actual case or controversy to confer jurisdiction upon this Court" is wrong in Fact and Law. Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214, 1223 (11th Cir. 2004). Doc. 3-2 – Pg 11. Unless the Attorney General of Georgia or Judge Kell can show that the United States Constitution or the United States Congress granted Judge Kell the authority to override Article VI, Clause 2, 3 (Supremacy Clause), 18 U.S.C. 242 and 28 U.S.C. 1447, Judge Kell came

> into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States. Scheuer v. Rhodes, 416 U.S. 232, 237, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974). Doc. 3 – Pg. 1. Doc. 3-2 – Pg. 16-19.

Whenever a judge acts where (s)he does not have jurisdiction to act, the judge is engaged in an act of treason to the constitution. United States v. Will, 449 U.S. 200, 216, 101 S.Ct. 471, 66 L.Ed.2d 392 (1980); Cohens v. Virginia, 19 U.S. 264, 404, 5 L.Ed. 257, 6 Wheat. 264 (1821). Doc. 1-5 - Pg. 1-3.

**CONSTITUTIONAL RIGHTS**

The federal courts, and not the state courts, are the

final arbiters of the scope of federal constitutional rights. See, e.g., Reynolds v. Sims, 377 U.S. 533, 566, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964) (state may not restrict federally protected right); Cooper v. Aaron, 358 U.S. 1, 18, 78 S.Ct. 1401, 3 L.Ed.2d 5, 3 L.Ed.2d 19 (1958) (federal courts determine the scope of federal constitutional rights). Doc. 1 - Pg. 1-6. Doc. 11 – Pg. 4.

The Supreme Court explained that a constitutional right is "clearly established" when the "contours of the right [are] sufficiently clear [such] that a reasonable official would understand that what he is doing violates that right". Anderson v. Creighton, 483 U.S. 635, 640, 97 L.Ed.2d 523, 107 S.Ct. 3034 (1987). Doc. 1-3 – Pg. 1-7. Doc. 1-4 – Pg. 1-2. Doc. 1-6 – Pg. 1-7. Under this standard, a plaintiff need not show that the government official's conduct specifically has been held unlawful, but rather that "in the light of pre-existing law the unlawfulness [was] apparent". Id. Doc. 1-3 – Pg. 2-4, 6-7. Doc. 1-4 – Pg. 1-2. Doc. 1-5 – Pg. 1-3. Doc. 1-6 – Pg. 1-7. Doc. 1– Pg. 1. It is up to this court to determine whether Judge Kell's actions violated Mr. McGee's federal rights, and, if so, whether those rights were clearly established. Harlow v. Fitzgerald, 457 U.S. 800, 800, 73 L.Ed.2d 396, 102 S.Ct. 2727 (1982); Wood v. Kesler, 323 F.3d 872, 877 (11th Cir. 2003).

**JUDICIAL IMMUNITY**

The mere fact that Judge Kell performs an action does not entitle him to judicial immunity; judicial immunity is justified and defined by the functions it

protects and serves, not by the person to whom it attaches. Doc. 1-5 – Pg. 1-3. Doc. 3 - Pg. 1. Doc 3-2 – Pg. 8, 18-19. We have consistently

> emphasized that the official seeking absolute immunity bears the burden of showing that such immunity is justified by the function in question. See, *e.g., Forrester v. White,* 484 U.S. 219, 224, 108 S.Ct. 538, 542, 98 L.Ed.2d 555. Pp. 484-487.
>
> The presumption is that qualified rather than absolute immunity is sufficient to protect government officials in the exercise of their duties. We have been quite sparing in our recognition of absolute immunity, *Forrester, supra,* 484 U.S., at 224, 108 S.Ct., at 542, and have refused to extend it any "further than its justification would warrant." *Harlow, supra,* 457 U.S., at 811, 102 S.Ct., at 2734. Burns v. Reed, 500 U.S. 478, 486-487, 111 S.Ct. 1934, 114 L.Ed.2d 547 (1991) (internal quotation marks and citations omitted).

"Whether the act done by him was judicial or not is to be determined by its character, and not by the character of the agent. Whether he was a county judge or not is of no importance". Ex parte Virginia, 100 U.S. 339, 348, 25 L.Ed. 676 (1879). Doc. 3-2 – Pg. 8. The judicially fashioned doctrine of official immunity does not reach "so far as to immunize criminal conduct proscribed by an Act of Congress....". Gravel v. United States, 408 U.S. 606, 627, 92 S.Ct. 2614, 33 L.Ed.2d 583 (1972). Doc. 1-5 –

Pg. 1-3. Doc. 12 - Pg. 2-3.

"Congress intended § 1983 to be an independent protection for federal rights, and there is nothing to suggest that Congress intended to expand the common-law doctrine of judicial immunity to insulate state judges completely from federal collateral review". Pulliam v. Allen, 466 U.S. 522, 523, 104 S.Ct. 1970, 80 L.Ed.2d 565 (1984). Doc. 1-6 – Pg. 6-7. Doc. 3-2 – Pg. 18-19. Doc. 11 – Pg. 2.

The Supreme Court found 1983 to be an explicit exception to the anti-injunction statute, citing Ex parte Virginia for the proposition that the

> very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights to protect the people from unconstitutional action under color of state law, `whether that action be executive, legislative, or judicial.' Ex parte Virginia, 100 U.S., at 346, 25 L.Ed. 676. Mitchum v. Foster, 407 U.S. 225, 242, 92 S.Ct. 2151, 32 L.Ed.2d 705 (1972). See Pulliam v. Allen, 466 U.S. 522, 540, 104 S.Ct. 1970, 80 L.Ed.2d 565 (1984). Doc. 1 – Pg. 1-6. Doc. 1-5 – Pg. 1-3. Doc. 1-6 – Pg. 6-7.

> We point out in addition, that the rationale for the limitation on judicial immunity when subject matter jurisdiction is lacking applies with equal force when personal jurisdiction is lacking. In Bradley v. Fisher, the court stated that where there is no jurisdiction over the subject matter, any authority exercised is a usurped authority. 13

Wall. at 351, 20 L.Ed. 646. Although the modern conception of personal jurisdiction generally refers to due process, see, e.g., International Shoe Co. v. Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945), the foundation of personal jurisdiction has always been a court's power to act. McDonald v. McBee, 243 U.S. 90, 37 S.Ct. 343, 61 L.Ed. 608 (1917); Pennoyer v. Neff, 95 U.S. 714, 24 L.Ed. 565 (1878). When a court acts without personal jurisdiction, its authority is as much a usurped authority as when the court acts without subject matter jurisdiction. Dykes v. Hosemann, 743 F.2d 1488, 1497 (11th Cir. 1984). Doc. 1-6 – Pg. 6-7. Doc. 3-2 – Pg. 18-19. Doc. 11 – Pg. 2.

**INDIVIDUAL CAPACITY**

These Supreme Court cases expressly recognize that individual capacity suits be brought against government officials who acted under color of state law. Brandon v. Holt, 469 U.S. 464, 472-73, 105 S.Ct. 873, 83 L.Ed.2d 878 (1985). See also Owen v. City of Independence, 445 U.S. 622, 100 S.Ct. 1398, 63 L.Ed.2d 673 (1980). Doc 3-2 - Pg. 15-19.

> [T]he Eleventh Amendment provides no bar to recovery of damages against state officers acting in their individual capacities. Cf. Kentucky v. Graham, --- U.S. at ----, 105 S.Ct. at 3106, 87 L.Ed.2d at 122 ("On the merits, to establish personal liability in a Sec. 1983 action, it is enough to show that the official, acting under color of state law, caused the deprivation of a

federal right") (emphasis in original). Gamble v. Florida Department of Health & Rehabilitative Services, 779 F.2d 1509, 1512 (11th Cir. 1986). Lundgren v. McDaniel, 814 F.2d 600, 603 (11th Cir. 1987). Doc. 1 – Pg. 1. Doc 3-2 – Pg. 16.

**PUNITIVE DAMAGES**

A plaintiff may be awarded punitive damages "in a § 1983 action when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others". Smith v. Wade, 461 U.S. 30, 56, 103 S.Ct. 1625, 75 L.Ed.2d 632 (1983). Doc. 1-5 – Pg. 1-3. Doc. 3-2 – Pg. 3.

**Did this court (En Banc) error in not overturning the Panel Ruling that the district court did not have Subject Matter Jurisdiction in Case No. 08-17063?** Doc. 3-3 - Pg. 2-4. Doc. 6-2 – Pg. 3. Doc. 12-2 – Pg. 13, 15. Doc. 14-2 – Pg. 1, 5.

A federal district court may decline to exercise its jurisdiction because of parallel state-court litigation only in exceptional circumstances; only the clearest of justifications will warrant dismissal. Colorado River Water Conservation District v. United States, 424 U.S. 800, 818-19, 96 S.Ct. 1236, 47 L.Ed.2d 483 (1976); McClellan v. Carland, 217 U.S. 268, 282, 30 S.Ct. 501, 54 L.Ed. 762 (1910); Lops v. Lops, 140 F.3d 927, 942 (11th Cir. 1998).

"In short, the state and federal courts had concurrent jurisdiction" in D. C. Docket No. 08-01433-CV-TWT-1 "and neither court was free to

prevent either party from simultaneously pursuing claims in both courts". Atlantic Coast Line R. Co. v. Locomotive Engineers, 398 U.S. 281, 295, 90 S.Ct. 1739, 26 L.Ed.2d 234 (1970). Doc. 3-3 – Pg. 2-4. Doc. 12-2 – Pg. 13, 15. Doc. 13-2 – Pg. 1-5. Doc. 14-2 – Pg. 1, 5.

**STATE LAW AND PRECEDENT**

> State law is to be applied in the federal as well as the state courts and it is the duty of the former in every case to ascertain from all the available data what the state law is and apply it rather than to prescribe a different rule, however superior it may appear from the viewpoint of 'general law' and however much the state rule may have departed from prior decisions of the federal courts. . . . Where an intermediate appellate state court rests its considered judgment upon the rule of law which it announces, that is a datum for ascertaining state law which is not to be disregarded by a federal court unless it is convinced by other persuasive data that the highest court of the state would decide otherwise. West v. American Telephone & Telegraph Co., 311 U.S. 223, 236-237, 61 S.Ct. 179, 85 L.Ed. 139 (1940) (citations omitted). Doc. 3-3 – Pg. 3-4.

"In the absence of federal law modifying the operation of 28 U.S.C. 1738 – which provides that state judicial proceedings shall have the same full faith and credit in every court within the United States as they have in the courts of the State

from which they are taken - the preclusive effect in federal court of" Mr. McGee's "state-court judgment is determined by" Georgia Law. Migra v. Warren City School Dist. Bd. of Ed., 465 U.S. 75, 76, 104 S.Ct. 892, 79 L.Ed.2d 56 (1984). A clause in the Constitution must be given full force and effect throughout the Union. King v. Mullins, 171 U.S. 404, 422, 18 S.Ct. 925, 43 L.Ed. 214 (1898). Doc. 6 – Pg. 2-3.

When we address issues of state law, we are bound by the decisions of the state supreme court. Flintkote Co. v. Dravo Corp., 678 F.2d 942, 945 (11th Cir. 1982). Doc. 3-3 – Pg. 2-3. Doc. 13-2 – Pg. 2-4. Of course, our prior panel precedent rule still applies even when we are dealing with state law issues. Venn v. St. Paul Fire & Marine Ins. Co., 99 F.3d 1058, 1066 (11th Cir. 1996). But "[i]f state law changes or is clarified in a way that is inconsistent with the state law premise of one of our earlier decisions, the prior panel precedent rule does not bind us to follow our earlier decision". United States v. Johnson, 528 F.3d 1318, 1320 (11th Cir. 2008); see also Venn, 99 F.3d at 1066 ("[I]f subsequent decisions of the . . . [state] courts cast doubt on our interpretation of state law, a panel would be free to reinterpret state law in light of the new precedents." (quotation marks omitted)). Instead, we follow the latest statement of state law by the state supreme court. Doc. 3-3 – Pg. 3-4. Doc. 13-2 – Pg. 2-4.

INTEGRITY OF THE COURT

Judge Kell has made a mockery of this court by confirming this court made a "clear error" when it

affirmed the district court's **ORDER** in Case No. 08-17063 under the premise that it did not have Subject Matter Jurisdiction under the Rooker-Feldman Doctrine.

**Mr. McGee has yet to be given an explanation by any State or Federal Court of how he could LAWFULLY be in CONTEMPT of a State Court ORDER that is not in compliance with the Laws of the State.** O.C.G.A. § 19-9-23 (a). McCall v. McCall, 246 Ga.App. 770, 542 S.E.2d 168 (2000). Hammontree v. Hammontree, 186 Ga.App. 819, 368 S.E.2d 576 (1988). O.C.G.A. § 9-11-52 (a). Wingard v. Paris, 270 Ga. 439, 511 S.E.2d 167 (1999). Doc. 12-2 – Pg. 2-5, 7.

This court is betrayed by its own words "Mr. McGee was a state court loser in his . . . child custody dispute who is now complaining of injuries caused by the alleged improper state contempt orders entered by Judge Kell" (internal quotes omitted). Doc. 3-3 – Pg. 3-4.

Mr. McGee did not ask the Federal Courts to overturn a **FINAL** State Court ruling in his Divorce case. Doc. 12-2 – Pg. 2-5, 13, 15. Doc. 14-2 – Pg. 1, 5. Mr. McGee asked the Federal Courts to protect and defend the Rights guaranteed by the United States Constitution in the Georgia State Courts.

The Supreme Court stated "We cannot find clear error unless 'we are left with a definite and firm conviction that a mistake has been committed.'". United States v. Crawford, 407 F.3d 1174, 1177 (11th Cir. 2005) (quoting Glassroth v. Moore, 335 F.3d 1282, 1292 (11th Cir. 2003)). Doc. 3-3 – Pg. 3-4. As for "plain error", there is a rebuttable

presumption that the United States Constitution, the Laws of the United States and the Laws of the State of Georgia were ignored because of the status and titles of the Plaintiff and Defendant(s). Doc. 1 – Pg. 1.

" 'Plain' is synonymous with 'clear' or, equivalently, 'obvious.' ". United States v. Olano, 507 U.S. 725, 732, 113 S.Ct. 1770, 123 L.Ed.2d 508 (1993). "[W]here the law at the time of trial was settled and clearly contrary to the law at L.Ed.2d 508 (1993). "[W]here the law at the time of trial was settled and clearly contrary to the law at the time of appeal--it is enough that an error be 'plain' at the time of appellate consideration". Johnson v. United States, 520 U.S. 461, 462, 117 S.Ct. 1544, 137 L.Ed.2d 718 (1997).

The rulings from the district court, D. C. Docket No. 08-01433-CV-TWT-1 and this court in Case No. 08-17063 lead Mr. McGee to question "the fairness, integrity or public reputation of the judicial proceedings" in both the State and Federal Courts. United States v. Hall, 314 F.3d 565, 566 (11th Cir. 2002). Doc. 1-5 – Pg. 1-3. Doc. 3-3 – Pg. 3-4. Doc. 12-2 – Pg. 1. Doc. 13-2 – Pg. 1-9.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

A Pro Se party would have a fool for a client if a Judge issued an **ORDER** alleging **CONTEMPT** when he knew (in the 1st person) that an Attorney made unsworn statements (i.e. **LIED**) and did not move the court to provide **Findings of Facts and Conclusions of Law**. O.C.G.A. § 24-9-60. King v.

Mullins, 171 U.S. 404, 422, 18 S.Ct. 925, 43 L.Ed. 214 (1898); Cargill v. Turpin, 120 F.3d 1366, 1386 (11th Cir. 1997); Grantham v. Grantham, 224 Ga.App. 1, 479 S.E.2d 370 (1996) reconsideration denied. Doc. 3-3 – Pg. 3.

**Did the district court error in using Feldman-Rooker doctrine to deny Subject Matter Jurisdiction?** Doc. 1 - Pg. 1-18. Doc. 12 – Pg. 1. Doc. 8 – Pg. 1.

## ABUSE OF DISCRETION

An abuse of discretion occurs when a district court "applies an incorrect legal standard, follows improper procedures in making the determination, . . . makes findings of fact that are clearly erroneous. . . . [or] appl[ies] the law in an unreasonable or incorrect manner". Klay v. Humana, Inc., 382 F.3d 1241, 1251 (11th Cir. 2004) (quotation omitted).

## SUBJECT MATTER JURISDICTION

The district court abused its discretion in alleging "The Court lacks subject matter jurisdiction under the Feldman-Rooker doctrine". Doc. 8 – Pg. 1. The district court failed to apply the proper legal standard regarding jurisdiction which was an abuse of discretion. Boyes v. Shell Oil Products Co., 199 F.3d 1260, (11th Cir. 2000); American Civil Liberties Union of Georgia v. Barnes, 168 F.3d 423, 427 (11th Cir. 1999).

Jurisdiction once challenged cannot be assumed and must be decided. Maine v. Thiboutot, 448 U.S. 1, 31, 100 S.Ct. 2502, 65 L.Ed.2d 555 (1980); Brooks

v. Yawkey et al., 200 F.2d 633 (1st Cir. 1953); Thomson v. Gaskill, 315 U.S. 442, 443, 62 S.Ct. 673, 86 L.Ed. 951 (1942); Albrecht v. United States, 273 U.S. 1, 4, 47 S.Ct. 250, 71 L.Ed. 505 (1927); Hagans v. Lavine, 415 U.S. 528, 529, 94 S.Ct. 1372, 39 L.Ed.2d 577 (1974). It is necessary that the record present the facts establishing the jurisdiction of the tribunal. Louisville & Nashville R. Co. v. Mottley, 211 U.S. 149, 152, 29 S.Ct. 42, 53 L.Ed. 126 (1908).

For purposes of establishing civil rights jurisdiction, it is irrelevant whether or not Judge Kell acted in accordance with state law, so long as Judge Kell, acting under color of state law, has arguably deprived Mr. McGee of rights secured by the Federal Constitution. Citizens Energy Coalition of Indiana, Inc. v. Sendak, 594 F.2d 1158, 1161-1162 (7th Cir. 1979). See also Hagans v. Lavine, 415 U.S. 528, 529, 94 S.Ct. 1372, 39 L.Ed.2d 577 (1974). Doc. 1-3 – Pg. 1-7. Doc. 1-4 – Pg. 1-2. Doc. 1-5 – Pg. 1-3.

In Young, the Court stated

> 'But the general doctrine of Osborn v. Bank of United States, that the circuit courts of the United States will restrain a state officer from executing an unconstitutional statute of the state, when to execute it would violate rights and privileges of the complainant which had been guaranteed by the Constitution, and would work irreparable damage and injury to him, has never been departed from.' Ex Parte Young, 209 U.S. 123, 152, 28 S.Ct. 441, 52 L.Ed. 714 (1908).

"A complaint alleging a colorable federal cause of

action confers district court jurisdiction even if the complaint is ultimately dismissed for failure to state a claim." Advanced Bodycare Solutions, LLC v. Thione Int'l, Inc., 524 F.3d 1235, 1238 (11th Cir. 2008). See Steel Co. v. Citizens for a Better Env't., 523 U.S. 83, 89, 118 S. Ct. 1003, 1016-20 (1998) (failure to state a federal claim does not defeat jurisdiction unless clearly frivolous or made only to allege federal jurisdiction).

The Supreme Court has definitively stated that an assertion that federal law preempts a conflicting state law or regulation can be the subject of a suit in federal court under § 1331. Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 96, n.14, 103 S.Ct. 2890, 77 L.Ed.2d 490 (1983) states:

> It is beyond dispute that federal courts have jurisdiction over suits to enjoin state officials from interfering with federal rights. See Ex parte Young, 209 U.S. 123, 160-162, 28 S.Ct. 441, 454-455, 52 L.Ed. 714 (1908). A plaintiff who seeks injunctive relief from state regulation, on the ground that such regulation is pre-empted by a federal statute which, by virtue of the Supremacy Clause of the Constitution, must prevail, thus presents a federal question which the federal courts have jurisdiction under 28 U.S.C. §§ 1331 to resolve. See Smith v. Kansas City Title & Trust Co., 255 U.S. 180, 199-200, 41 S. Ct. 243, 244-245, 65 L.Ed. 577 (1921); Louisville & Nashville R. Co. v. Mottley, 211 U.S. 149, 152, 29 S. CT. 42, 43, 53 L.Ed.2d 126 (1908); see also Franchise Tax Board, 463 U.S., at ----, and n. 20, 103 S.Ct., at 2851-2852, and n. 20, 75 L.Ed.2d, at

---, and n. 20; Note, Federal Jurisdiction over Declaratory Suits Challenging State Action, 79 Colum.L.Rev. 983, 996-1000 (1979). This Court, of course, frequently has resolved pre-emption disputes in a similar jurisdictional posture. See, e.g., Ray v. Atlantic Richfield Co., 435 U.S. 151, 98 S.Ct. 988, 55 L.Ed.2d 179 (1978); Jones v. Rath Packing Co., supra; Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 83 S.Ct. 1210, 10 L.Ed.2d 248 (1963); Hines v. Davidowitz, 312 U.S. 52, 61 S.Ct. 399, 85 L.Ed. 581 (1941). Doc. 1 - Pg. 1-6. Doc. 1-3 – Pg. 2-7. Doc. 1-4 – Pg. 1-2. Doc. 1-6 – Pg. 1-8. Doc. 1-7 – Pg. 1-6. Doc. 3-2 – Pg. 4-9, 13-15. Doc 3-3 - Pg. 3-4. Doc. 6 – Pg. 2-3. Doc. 6-2 – Pg. 3. Doc. 8 - Pg. 1. Doc. 10 – 2-7. Doc. 11 – Pg 2-4. Doc. 12 – Pg. 2-3.

"Federal courts have jurisdiction under 1331 where the petitioner's right to recover will be sustained if federal law is given one construction and will be defeated if it is given another, unless the claim clearly appears to be immaterial and made solely to obtain jurisdiction, or is wholly insubstantial and frivolous." Verizon Maryland, Inc. v. Public Service Commission of Maryland, 535 U.S. 635, 636 (S.Ct., 2002). Doc. 1 – Pg. 1-6. Doc. 8 – Pg. 1. Doc. 15 – Pg. 1.

Mr. McGee's prayer for injunctive relief--that Judge Kell be restrained from enforcing an order contravention of controlling federal law—clearly satisfies a "straightforward inquiry." Idaho v. Coeur d'Alene Tribe of Idaho, 521 U.S. 261, 296, 298-99, 117 S.Ct. 2028, 138 L.Ed.2d 438 (1997). Doc. 1 – Pg.

5-6. Doc. 1-3 – Pg. 1-2. Doc. 1-5 – Pg. 1-3. Doc. 1-7 – Pg. 1-6. Doc. 6 – Pg. 2-3. Doc. 10 – Pg. 3.

In Redford v. Gwinnett County, No. 09-10807, 2009 WL 3059056 (11th Cir. Sep. 25, 2009) (unpublished), this court stated "federal courts have original jurisdiction over § 1983 claims. See 28 U.S.C. § 1331."

**MOTION TO DISMISS**

A court faced with a motion to dismiss a pro se complaint must read the complaint's allegations expansively, Haines v. Kerner, 404 U.S. 519, 520-21 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), and take them as true for purposes of deciding whether they state a claim. Cruz v. Beto, 405 U.S. 319, 322, 92 S.Ct. 1079, 31 L.Ed.2d 263 (1972). The district court has a duty to examine a complaint to determine if the allegations provide for relief on any possible theory. Bonner v. Circuit Court of St. Louis, 526 F.2d 1331, 1334 (8th Cir. 1975) (quoting Bramlet v. Wilson, 495 F.2d 714, 716 (8th Cir. 1974)).

> In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957) (footnote omitted). Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974).
>
> "To survive a motion to dismiss, a complaint must

contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face". Ashcroft v. Iqbal, __ U.S. __, 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 1974 (2007)); Sinatrainal v. Coca-Cola Co., 578 F.3d 1252, 1268 (11th Cir. 2009). A complaint states a facially plausible claim for relief "when the plaintiff pleads factual content that allows the court to draw a reasonable inference that the defendant is liable for the misconduct alleged". Iqbal, __ U.S. __, 129 S. Ct. at 1949. A complaint does not state a facially plausible claim for relief if it shows only "a sheer possibility that the defendant acted unlawfully". Id.

The district court abused its discretion by issuing **ORDER**s that contained no allegations of fact or law to prove beyond any doubt that Mr. McGee can prove no set of facts in support of his claim which would entitle him to relief. Doc. 8 – Pg. 1.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This court has admonished district courts that their orders should contain sufficient explanations of their rulings so as to provide this court with an opportunity to engage in meaningful appellate review. See Clay v. Equifax, Inc., 762 F.2d 952, 957-58 (11th Cir.1985) (collecting cases in which the Supreme court and this court's predecessor court "urged the District court to state the reason for its decision and the underlying predicate"); see also Serra Chevrolet, Inc. v. General Motors Corp., 446 F.3d 1137, 1151 (11th Cir.2006) (in imposing

sanctions, district court must clearly state its reasons so that meaningful review may be had on appeal).

The district court's abused its discretion in alleging "this is an impermissible collateral attack upon Judge Kell's decisions in the Plaintiff's divorce and child support proceedings" by not providing any findings of Fact or Law to support the required four prerequisites. Christo v. Padgett, 223 F.3d 1324, 1339 (11th Cir. 2000). Doc. 8 – Pg. 1.

**RULE 11 SANCTIONS**

The district court abused its discretion by providing no findings of Fact or Law to support which motions were "without arguable merit either in law or fact". Bilal v. Driver, 251 F.3d 1346, 1349 (11th Cir. 2001). Doc. 15 – Pg. 1.

Mr. McGee pleaded the Law supporting each Motion that he filed. Doc. 5 – Pg. 1-2. Doc. 6 – Pg. 1-2. Doc. 12 - Pg. 1-2. Doc. 13 - Pg. 1-2. Doc. 14 - Pg. 1-2.

"The goal of Rule 11 sanctions is to reduce frivolous claims, defenses, or motions, and to deter costly meritless maneuvers". Massengale v. Ray, 267 F.3d 1298, 1302 (11th Cir. 2001) (quotations omitted).

By failing to address the **ORDER OF INCARCERATION**, the district court leaves a rebuttable presumption that it chose not address Mr. McGee's **COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF AND AN INDEPENDENT ACTION IN EQUITY** because of the issues involved and the Title and Status of the

parties in the proceedings. Doc. 1 – Pg. 1- Pg. 1-6. Doc. 1-5 – Pg. 1-3.

## CONCLUSION

Because the district court abused its discretion and erred in alleging that Feldman-Rooker Doctrine denied Subject Matter Jurisdiction, the **ORDER** dismissing Mr. McGee's **COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF AND AN INDEPENDENT ACTION IN EQUITY** should be reversed and the case remanded. Doc. 1 – Pg. 1-18. Doc. 8 – Pg. 1. Doc. 15 – Pg. 1.

Mr. McGee moves this court for an **ORDER**:

A. Declaring the **ORDER OF INCARCERATION** filed on March 25, 2009, in **CIVIL ACTION FILE NO. 08-1-10450-49** In The Superior Court of Cobb County Georgia is void ab initio.

B. Requiring Judge Kell to refund Mr. McGee the sum of $5850.00 plus interest, court costs and reasonable Attorney Fees.

C. Declaring the **ORDER TO RECALL BENCH WARRANT** filed on May 5, 2009, is moot.

D. Vacating the **ORDER** filed on September 3, 2009 in the district court for **CIVIL ACTION FILE NO. 1:09-CV-1338-TWT**.

E. Vacating the **ORDER** filed on October 16, 2009 in the district court for **CIVIL ACTION FILE NO. 1:09-CV-1338-TWT**.

F. Remanding **CIVIL ACTION FILE NO. 1:09-CV-1338-TWT** to the district court.

Respectfully Submitted,

Dated: December 21, 2009

/S/_____
Jason F. McGee, Pro Se

## APPENDIX O

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JASON F. MCGEE,
PLAINTIFF,
v. Case No. 1:09-CV-1338-TWT
THE HONORABLE CARLTON L. KELL,
SUPERIOR COURT JUDGE,
COBB COUNTY GEORGIA, in his
Individual Capacity
DEFENDANT.

**PLAINTIFF'S 3rd REQUEST FOR MANDATORY JUDICIAL NOTICE**

Pursuant to Rule 201 of the Federal Rules of Evidence, Plaintiff moves the Court to enter an **ORDER** for Judicial Notice.

1. Grounds for Judicial Notice: Rule 201 (b)(1)(2), Rule 201 (d) and Rule 201 (f) of the Federal Rules of Evidence.

2. Federal Rule of Evidence 201(b) provides that a court may take judicial notice of a fact "not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned."

3. Judicial notice of law, legislative facts, or factual matters is proper where there is no dispute as to the authenticity of those matters. **See Oneida**

**Indian Nation of New York v. New York, 691 F.2d 1070, 1086 (2nd Cir. 1982); see also Zimomra v. Alamo Rent-A-Car, Inc., 111 F.3d 1495, 1503 (10th Cir. 1997).**

4. A court may properly take notice of "matters of public record" pursuant to Federal Rule of Evidence Section 201, to the extent they are not subject to reasonable dispute. **Lee v. City of Los Angeles, *250 F.3d 668, 689* (9th Cir. 2001).**

5. This includes allegations made in pleadings and other documents filed in other lawsuits. **See Burbank-Glendale-Pasadena Airport Authority v. City of Burbank, 136 F. 3d 1360, 1364 (9th Cir. 1998)** (taking judicial notice of pleadings filed in state court action); **MGIC Indemnity Corp. v. Weisman, 803, F.2d 500, 504-05 (9th Cir. 1986)** (taking judicial notice of allegations made in motion to dismiss and supporting memorandum filed in different federal court action); **Kent v. DaimlerChrysler Corp., 200 F. Supp. 2d 1208, 1219 (N.D. Cal. 2002)** (taking judicial notice of legal memorandum filed in state court action).

6. Plaintiff, Jason F. McGee, moves this Honorable Court to take Judicial Notice of the following fact:

**TITLE 18, U.S.C., SECTION 242**

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the

Constitution or laws of the United States, ... shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnaping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

7. The following Exhibits, which consist of true and complete copies of Pleadings filed in the Superior Court of Cobb County Georgia:

A. **RULE NISI EXHIBIT U**
B. **FINAL ORDER ALLOWING RESPONDENT, DEBBIE D. MCGEE, TO RETAIN PRIMARY CUSTODY OF THE PARTIES' THREE MINOR CHILDREN**
**AND**
**FINAL ORDER HOLDING PETITIONER, JASON F. MCGEE, IN CONTEMPT OF COURT FOR FAILURE TO COMPLY WITH THE ORIGINAL FINAL DIVORCE**

DECREE EXHIBIT V

C. FINAL ORDER REINSTATING CHILD SUPPORT EXHIBIT W
D. MOTION FOR NEW TRIAL EXHIBIT X
E. MOTION FOR NEW TRIAL EXHIBIT Y
F. NOTICE OF APPEAL EXHIBIT Z
G. LETTER FROM CIVIL RIGHTS DIVISION EXHIBIT 1
H. CUSTODY Calendar Call EXHIBIT 2
I. COMPLAINT Calendar Call EXHIBIT 3
J. CONTEMPT Calendar Call EXHIBIT 4

Respectfully Submitted,
Dated: September 16, 2009

/S/_____
Jason F. McGee, Pro Se

## APPENDIX P

**IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION**

**JASON F. MCGEE,**
**Plaintiff,**

**Civil Action No. 1:09-CV-1338**

**v.**
**THE HONORABLE CARLTON L. KELL, in his individual capacity,**
**Defendant.**

---

**DEFENDANT THE HONORABLE CARLTON L. KELL'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR NEW TRIAL**

COMES NOW Defendant the Honorable Carlton L. Kell, by special appearance and without submitting to the jurisdiction of the Court, by and through the Attorney General of the State of Georgia, and respectfully files this his Response in Opposition to Plaintiff's Motion for New Trial (R-10), which, for purposes of this Response, Defendant will treat as a Motion for Reconsideration.

**I. OVERVIEW OF THE CASE**

Plaintiff, who is *pro se*, filed the instant suit on May 19, 2009, entitled "Complaint for Declaratory Judgment and other Relief and an Independent

Action in Equity" (hereinafter, "Complaint") against The Honorable Carlton L. Kell of the Cobb County Superior Court (hereinafter, "Judge Kell") alleging due process violations and seeking various declaratory, injunctive and equitable relief. Specifically, Plaintiff asks this Court to declare as void certain contempt orders entered by Judge Kell in Plaintiff's ongoing custody and child support dispute before the Cobb County Superior Court.[1] On June 15, 2009, Defendant submitted to this Court his Motion to Dismiss by Special Appearance. (R-3). Defendant requested this Court dismiss this action based upon the grounds that Plaintiff failed to state a claim upon which relief may be granted, the Plaintiff lacked standing, Defendant was entitled to absolute judicial immunity, and this Court lacked jurisdiction over Plaintiff's claims pursuant to the doctrines of Rooker-Feldman and Younger v. Harris. (Id.).

On September 3, 2009, the Court granted Defendant's Motion to Dismiss on the sole ground that the Court lacked jurisdiction under the Feldman-Rooker doctrine. (R-8). On that same date, this Court entered judgment in favor of Defendant. (R-9).

---

[1] Plaintiff previously came before this court attempting to seek relief from Judge Kell's order in his state divorce action, McGee v. Kell and Drukman, Civil Action No. 1.08-CV-1433. That action was dismissed by this Court on October 20, 2008 (Doc. 12). Plaintiff appealed to the Eleventh Circuit Court of Appeals, who affirmed the dismissal on June 8, 2009 A copy of the Opinion of the Court of Appeals is attached hereto as Exhibit "A."

On September 9, 2009, Plaintiff, proceeding pro se, filed with the Court his "Motion for New Trial." (R-10). More aptly characterized a Motion for Reconsideration of the Court's September 3, 2009, Order, Plaintiff requests the Court enter an Order "Clearly stating the Legal Conclusions of Law supporting the Order" dismissing this action and/or "Vacating the Order" dismissing this action. (Id. at 7).

Defendant would argue that the Court's conclusion that it lacked jurisdiction under the Feldman-Rooker doctrine clearly states the legal conclusion upon which the Court's dismissal of Plaintiff's action was based, and no additional clarification is necessary. Defendant would further argue that Plaintiff has failed to set forth any facts or controlling law which would necessitate that this Court vacate its September 3, 2009 Order. Specifically, the Plaintiff has failed to articulate any authority which would permit this Court to exercise jurisdiction over a pending state court divorce and child support action.

**II. This Court Correctly Concluded that it Lacks Subject Matter Jurisdiction Pursuant to the Rooker-Feldman Doctrine.**

As this Court correctly concluded, it lacks subject matter jurisdiction over Plaintiff's claims under the Rooker-Feldman doctrine. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923). It is well established that litigants may not obtain review of a state court's final orders or

judgments by filing an action in federal district court. Feldman, 460 U.S. at 482 (1983). The Eleventh Circuit has reaffirmed the validity of the Rooker-Feldman doctrine in dismissing federal claims that are intertwined with state court claims. Goodman v. Sipos, 259 F.3d 1327 (11th Cir. 2001).

In this action, Plaintiff has asked the Court to declare the March 25, 2009, Order of Incarceration entered by Defendant based upon Plaintiff's failure to comply with the Court's Order of February 20, 2009 be declared void *in abnitio*. Plaintiff has not sought relief through the Georgia state court system, but rather attempted to bypass the State Courts in order to have Defendant's Order reviewed by this Court. This is the precise type of action that is outside the scope of federal review pursuant to the Rooker-Feldman doctrine.

The Court properly concluded it lacked jurisdiction over Plaintiff's claims and dismissed Plaintiff's action. Plaintiff has failed to set forth any authority which would require the Court to revisit or reconsider its decision. For this reason, Plaintiff's Motion for New Trial (which is more appropriately characterized as a Motion for Reconsideration) should be denied.

## III. CONCLUSION

For the above and foregoing reasons, Defendant respectfully requests this Court to deny Plaintiff's Motion, award all costs of this response to Defendant, and grant such other and further relief as this Court deems appropriate.

Respectfully submitted this 15th day of September, 2009.

THURBERT E. BAKER 033887
Attorney General

KATHLEEN M. PACIOUS 558555
Deputy Attorney General

S/ Devon Orland
DEVON ORLAND 401250
Sr. Assistant Attorney General

/s/ Holly Loy Smith
Holly Loy Smith 036299
Assistant Attorney General

PLEASE ADDRESS ALL
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Atlanta, Georgia 30334-1300
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## APPENDIX Q

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JASON F. MCGEE,
PLAINTIFF,
v. Case NO. 1:09-CV-1338-TWT
THE HONORABLE CARLTON L. KELL Superior Court Judge, Cobb County Georgia, in his individual capacity,
DEFENDANT.

**MOTION FOR NEW TRIAL**

Plaintiff, Jason F. McGee, files a **MOTION FOR NEW TRIAL** for the **ORDER** docketed in **Case No. 1:09-CV-1338-TWT** filed **IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION** on September 4, 2009, pursuant to Federal Rules of Civil Procedure 59(e) on the following grounds:

1. The allegation "This is a pro se prisoner civil rights action against a Cobb County Superior Court Judge." is Misleading.

2. The allegation "This is a pro se prisoner civil rights action against a Cobb County Superior Court Judge." is Inaccurate.

3. The allegation "This action is an impermissible collateral attack upon Judge Kell's decisions in the Plaintiff s divorce and child support proceedings." is

not supported by any Facts in the **ORDER** docketed in **Case No. 1:09-CV-1338- TWT** filed **IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION** on September 4, 2009.

4. The allegation "This action is an impermissible collateral attack upon Judge Kell's decisions in the Plaintiff s divorce and child support proceedings." is not supported by any Conclusions of Law in the **ORDER** docketed in **Case No. 1:09-CV- 1338-TWT** filed **IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION** on September 4, 2009.

5. The **ORDER OF INCARCERATION** filed on March 25, 2009, in The Superior Court of Cobb County Georgia, in **CIVIL ACTION FILE NO. 08-1-10450-49** is:

A. A violation of the Plaintiff's due process rights. Zinennon v . Burch, 494 U.S. 113, 124 (1990) (quoting Daniels v. Williams, 474 U.S. 327, 331 (1986)).

B. A "[m]isuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of state law." as stated by the United States Supreme Court in United States v. Classic, 313 U.S. 299, 326 (1941).

C. Addressed by the United States Supreme Court in Parratt v. Taylor, 451 U.S. 527, 534-535 (1981):

[i]t is abundantly clear that one reason the legislation was passed was to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges and immunities guaranteed by the Fourteenth Amendment might be denied by the state agencies." Id., at 180.

D. void ab initio." Maseda v. Honda Motor, 861 F .2d at 1254-55 (citing Steamship Co. v. Tugman, 106 U.S. 118,122 (1882)). See also Resolution Trust Corp. v. Bayside Developers, 43 F .3d 1230, 1239 (9th Cir. 1994); Moore v. Interstate Fire Insurance, 717 F .Supp .1193 (S.D. Miss 1989); South Carolina v. Moore, 447 F.2d 1067, 1073 (4th Cir. 1971); United States v. Silberglitt, 441 F.2d 225, 227 (2d Cir . 1971); Lowe v. Jacobs, 243 F .2d 432, 433 (5th Cir . 1957).

5. The **ORDER** docketed in **Case No. 1:09-CV-1338-TWT** filed **IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION** on September 4, 2009 alleging "The Court lacks subject matter jurisdiction under the Feldman-Rooker doctrine." does not:

A. Provide any Conclusions of Law to prove that the Court is not relying upon an Incorrect Legal Theory that was clarified by the United States Supreme Court in

Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280 (2005).

B. Provide any Conclusions of Law to support the dismissal of the Plaintiff's **COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF AND AN INDEPENDENT ACTION IN EQUITY**

By addressing the Precedent supplied The United States Supreme Court in:

1. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007).
2. Parratt v. Taylor 451 U.S. 527, 527 (1981).
3. Miree v. DeKalb County, Ga., 433 U.S. 25, 27 n. 2, 97 S.Ct. 2490, 2492 n. 2, 53 L.Ed.2d 557 (1977).
4. Haines v. Kerner, 404 U.S. 519, 520 (1972).
5. Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-102, 2 L.Ed.2d 80 (1957); Tiftarea Shopper, Inc. v. Georgia Shopper, Inc., 786 F.2d 1115, 1117-18 (11th Cir.1986) (quoting Conley), Id. (quotation marks omitted) Brooks v. Blue Cross and Blue Shield of Fla., Inc., 116 F.3d 1364, 1369 (11th Cir. 1997).

C. Provide any Conclusions of Law to support the Court's dismissal of the Plaintiff's **COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF AND AN INDEPENDENT ACTION IN**

**EQUITY** addressing the Precedent supplied **IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT** in:

1. Mills v. Foremost Ins. Co., 511 F.3d 1300, 1303 (11th Cir. 2008) (quoting Castro v. Sec'y of Homeland Sec., 472 F.3d 1334, 1336 (11th Cir. 2006)).
2. Fin. Sec. Assur., Inc. v. Stephens, Inc., 500 F.3d 1276, 1282 (11th Cir. 2007) (quoting Twombly, 550 U.S. at 557, 559).
3. Boxer X v. Harris, 437 F.3d 1107, 1110 (11th Cir. 2006).
4. Glover v. Liggett Group, Inc., 459 F.3d 1304, 1308 (11th Cir. 2006).
5. GROSSMAN v. NATIONSBANK, 225 F.3d 1228, 1231-1232 (11th Cir. 2000).
6. Shands Teaching Hosp. & Clinics, Inc. v. Beech St. Corp., 208 F.3d 1308, 1310 (11th Cir. 2000).
7. Brooks v. BlueCross and Blue Shield of Fla., Inc., 116 F.3d 1364, 1368 (11th Cir. 1997).
8. Garcia v. Copenhaver, Bell & Assocs., 104 F.3d 1256, 1261 (11th Cir. 1997).
9. McKinney v. Pate, 20 F.3d 1550, 1556 (11th Cir. 1994) (en banc) (quoting Palko v. Connecticut, 302 U.S. 319, 325 (1937)).
10. GSW, Inc. v. Long County, 999 F. 2d 1508, 1510 (11th Cir. 1993).

11. Lawrence v. Dunbar, 919 F.2d 1525, 1528-29 (11th Cir. 1990) (quotation and alteration omitted).
12. Lawrence v. Dunbar, 919 F.2d 1525, 1529 (11th Cir.1990) (quoting Menchaca v. Chrysler Credit Corp., 613 F.2d 507, 511 (5th Cir.1980), cert. denied, 449 U.S. 953, 101 S.Ct. 358, 66 L.Ed.2d 217 (1980)) (citing Mortensen v. First Fed. Sav. & Loan Ass'n, 549 F.2d 884, 891 (3d Cir.1977)).
13. Simanonok v. Simanonok, 787 F.2d 1517, 1519 (11th Cir.1986)
14. Emory v. Peeler, 756 F.2d 1547, 1550 (1985)
15. Milburn v. United States, 734 F.2d 762, 765 (11th Cir.1984).
16. Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir.1981) (en banc).
17. Tucker v. National Linen Service Corp., 200 F.2d 858, 864 (5th Cir. 1953).

6. Plaintiff's **COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF AND AN INDEPENDENT ACTION IN EQUITY** docketed in **Case No. 1:09-CV-1338-TWT** clearly show Plaintiff alleged a threatened injury resulting from the putatively illegal actions by Judge Kell. Linda R. S. v. Richard D., 410 U.S. 614, 617 (1973). TITLE 18, U.S.C., SECTION 242.

7. Plaintiff's **COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF AND AN INDEPENDENT ACTION IN**

**EQUITY** docketed in **Case No. 1:09-CV-1338-TWT** clearly show Plaintiff alleged an actual injury resulting from the putatively illegal actions by Judge Kell. Linda R. S. v. Richard D., 410 U.S. 614, 617 (1973). TITLE 18, U.S.C., SECTION 242.

8. The **ORDER** docketed in **Case No. 1:09-CV-1338-TWT** filed **IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION** on September 4, 2009:

A. Cannot deny the prima facie evidence that Judge Kell had a good reason to find the Plaintiff in Contempt of Court after the Plaintiff filed a Complaint against him with the Judicial Qualifications Commission.

B. Cannot deny the prima facie evidence that Judge Kell's actions clearly contradicted his written words.

C. Provides No Conclusions of Law to support the denial of "Plaintiff's Plaintiff's Motion for Mandatory Judicial Notice [Doc. 6]".

Plaintiff moves this Honorable Court for an **ORDER**:

a. Clearly stating the Legal Conclusions of Law supporting the **ORDER** docketed in **Case No. 1:09-CV-1338-TWT** filed **IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION** on September 4, 2009.

b. Vacating the **ORDER** docketed in **Case No.**

**1:09-CV-1338-TWT** filed **IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION** on September 4, 2009.

Respectfully Submitted,
Dated: September 9, 2009

/S/_____
Jason F. McGee, Pro Se

## APPENDIX R

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JASON F. MCGEE,
PLAINTIFF,
v. Case No. 1:09-CV-1338-TWT
THE HONORABLE CARLTON L. KELL,
SUPERIOR COURT JUDGE,
COBB COUNTY GEORGIA, in his
Individual Capacity
DEFENDANT.

**PLAINTIFF'S 2nd REQUEST FOR MANDATORY JUDICIAL NOTICE**

Pursuant to Rule 201 of the Federal Rules of Evidence, Plaintiff moves the Court to enter an **ORDER** for Judicial Notice.

1. Grounds for Judicial Notice: Rule 201 (b)(1)(2), Rule 201 (d) and Rule 201 (f) of the Federal Rules of Evidence.

2. Federal Rule of Evidence 201(b) provides that a court may take judicial notice of a fact "not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned."

3. Judicial notice of law, legislative facts, or factual matters is proper where there is no dispute as to the authenticity of those matters. **See Oneida**

**Indian Nation of New York v. New York, 691 F.2d 1070, 1086 (2nd Cir. 1982); see also Zimomra v. Alamo Rent-A-Car, Inc., 111 F.3d 1495, 1503 (10th Cir. 1997).**

4. A court may properly take notice of "matters of public record" pursuant to Federal Rule of Evidence Section 201, to the extent they are not subject to reasonable dispute. **Lee v. City of Los Angeles, *250 F.3d 668, 689* (9th Cir. 2001).**

5. This includes allegations made in pleadings and other documents filed in other lawsuits. **See Burbank-Glendale-Pasadena Airport Authority v. City of Burbank, 136 F. 3d 1360, 1364 (9th Cir. 1998)** (taking judicial notice of pleadings filed in state court action); **MGIC Indemnity Corp. v. Weisman, 803, F.2d 500, 504-05 (9th Cir. 1986)** (taking judicial notice of allegations made in motion to dismiss and supporting memorandum filed in different federal court action); **Kent v. DaimlerChrysler Corp., 200 F. Supp. 2d 1208, 1219 (N.D. Cal. 2002)** (taking judicial notice of legal memorandum filed in state court action).

6. Plaintiff, Jason F. McGee, moves this Honorable Court to take Judicial Notice of the following fact:

**UNITED STATES CONSTITUTION ARTICLE VI, CLAUSE 2, 3**
**(SUPREMACY CLAUSE)**

> 2. This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States,

shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

3. The senators and representatives beforementioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

7. The following Exhibits, which consist of true and complete copies of Information mailed to Mr. McGee from **THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**:

A. **DENIAL OF PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC. EXHIBIT S**

8. The following Exhibits, which consist of true and complete copies of a United States Post Office Certified Mail Receipt:

A. **CERTIFIED MAIL RECEIPT** addressed to Assistant Attorney General CRD 950 Pennsylvania Ave. N. W. Washington, DC 20530. **EXHIBIT T**

Respectfully Submitted,
Dated: August 10, 2009

/S/_____
Jason F. McGee, Pro Se

## APPENDIX S

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JASON F. MCGEE,
PLAINTIFF,
v. Case No. 1:09-CV-1338
THE HONORABLE CARLTON L. KELL,
SUPERIOR COURT JUDGE,
COBB COUNTY GEORGIA, in his
Individual Capacity
DEFENDANT.

**PLAINTIFF'S 1ST RESPONSE TO DEFENDANT THE HONORABLE CARLTON L. KELL'S MOTION TO DISMISS BY SPECIAL APPEARANCE**

1. When considering a motion to dismiss, all facts set forth in the plaintiffs complaint "are to be accepted as true and the court limits its consideration to the pleadings and exhibits attached thereto." GSW, Inc. v. Long County, 999 F. 2d 1508, 1510 (11th Cir. 1993).

2. A complaint may not be dismissed pursuant to Rule 12(b)(6) "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Lopez, 129 F .3d at 1189 (internal quotations and citation omitted). GROSSMAN v. NATIONSBANK, 225 F.3d 1228, 1231-1232 (11th Cir. 2000).

3. A complaint may not be dismissed because the

plaintiffs claims do not support the legal theory he relies upon since the court must determine if the allegations provide for relief on any possible theory. Robertson v. Johnston, 376 F.2d 43 (5th Cir.1967).

4. The Eleventh Circuit has recently written: [T]he Supreme Court has stated that the "accepted rule" for appraising the sufficiency of a complaint is "that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-102, 2 L.Ed.2d 80 (1957); Tiftarea Shopper, Inc. v. Georgia Shopper, Inc., 786 F .2d 1115, 1117-18 (11th Cir.1986) (quoting Conley). Id. (quotation marks omitted) Brooks v. Blue Cross and Blue Shield of Fla., Inc., 116 F.3d 1364, 1369 (11th Cir. 1997).

5. The district court may consider not only the complaint but also the exhibits attached to it. See Grossman v. Nationsbank, N.A., 225 F .3d 1228, 1231 (11th Cir. 2000) ("When considering a motion to dismiss, all facts set forth in the plaintiff's complaint are to be accepted as true and the court limits its consideration to the pleadings and exhibits attached thereto.") (quotation marks omitted)

6. ("[T]he analysis of a 12(b)(6) motion is limited primarily to the face of the complaint and attachments thereto."). Tucker v. National Linen Service Corp., 200 F .2d 858, 864 (5th Cir. 1953).

7. "[w]here there is a conflict between allegations in a pleading and exhibits thereto, it is well settled that the exhibits control." Tucker v. National Linen Service Corp., 200 F.2d 858, 864 (5th Cir. 1953).

8. In Bonner v. City of Prichard, 661 F .2d 1206, 1209 (11th Cir .1981) (en banc), the 11th Circuit Court Of Appeals adopted as binding precedent all decisions of the former Fifth Circuit handed down before October 1, 1981.

Respectfully Submitted,
Dated: July 20, 2009

/S/ _____
Jason F. McGee, Pro Se

## APPENDIX T

**IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION**

**JASON F. MCGEE,**
**Plaintiff,**

**Civil Action No. 1:09-CV-1338**

**v.**
**THE HONORABLE CARLTON L. KELL, in his individual capacity,**
**Defendant.**

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### DEFENDANT THE HONORABLE CARLTON L. KELL'S BRIEF IN SUPPORT OF MOTION TO DISMISS BY SPECIAL APPEARANCE

COMES NOW Defendant the Honorable Carlton L. Kell, by special appearance and without submitting to the jurisdiction of the Court, by and through the Attorney General of the State of Georgia, and respectfully files this Motion to Dismiss Plaintiff's Complaint.

### I. OVERVIEW OF THE CASE

Plaintiff, who is *pro se*, filed the instant suit on May 19, 2009, entitled "Complaint for Declaratory Judgment and other Relief and an Independent Action in Equity" (hereinafter, "Complaint") against The Honorable Carlton L. Kell of the Cobb County

Superior Court (hereinafter, "Judge Kell") alleging due process violations and seeking various declaratory, injunctive and equitable relief. Specifically, Plaintiff asks this Court to declare as void certain contempt orders entered by Judge Kell in Plaintiff's ongoing custody and child support dispute before the Cobb County Superior Court.[1]

On February 20, 2009, Judge Kell issued an Order in the Plaintiff's state court child support action compelling Plaintiff to pay Five Thousand One Hundred Dollars ($5,100.00) in child support arrearage and Seven Hundred Fifty Dollars in attorneys' fees on or before March 23, 2009. See Exhibit D to Complaint, Doc. 1.

In an effort, it would seem, to avoid contempt and to avoid paying the back child support, Plaintiff attempted to remove his divorce action from the Superior Court of Cobb County to the United States District Court for the Northern District of Georgia at Atlanta on March 13, 2009. See McGee v. McGee, Civil Action No. 1:09-CV-0690, Doc. 1. The Court remanded the action to the Superior Court on April 21, 2009 for lack of subject matter jurisdiction. See Order, April 21, 2009, Doc. 5.

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[1] Plaintiff previously came before this court attempting to seek relief from Judge Kell's order in his state divorce action, McGee v. Kell and Drukman, Civil Action No. 1:08-CV-1433. That action was dismissed by this Court on October 20, 2008. (Doc. 12). Plaintiff appealed to the Eleventh Circuit Court of Appeals, who affirmed the dismissal on June 8, 2009. A copy of the Opinion of the Court of Appeals is attached hereto as Exhibit "A."

On March 25, 2009, Judge Kell entered an Order of Incarceration based upon Plaintiff's failure to comply with the Court's Order of February 20, 2009, was found in willful contempt, and a bench warrant was issued for Plaintiff. Id.

On May 4, 2009, "an individual on behalf of" Plaintiff presented a certified check in the amount of $5,850; as such, Plaintiff was deemed to have "purged himself of willful contempt" the bench warrant was recalled. Order to Recall Bench Warrant, Complaint, Exhibit H.

Plaintiff's instant Complaint is based upon his attempted removal of his divorce action from the Superior Court of Cobb County to this Court, which, he claims, divested the Superior Court of jurisdiction and suspended the action in Superior Court. Plaintiff requests this court issue a declaratory judgment declaring the bench warrant issued on March 25, 2009, as "void ab initio;" issue an injunction prohibiting Judge Kell "from misusing his power...to order any person to violate the Laws of the United States of America...[and] to deprive any person of Equal Protection under the Law;" for compensatory damages, including the costs of litigation and "that any property taken from Plaintiff under color of state law be retuned to the Plaintiff;" and for compensatory and punitive damages in the amount of One Hundred Thousand Dollars ($100,000.00). Complaint, Doc. 1 at pp. 5-6.

## II. ARGUMENT AND CITATION OF AUTHORITY

### A. The Standard of Review.

A complaint is subject to dismissal pursuant to Fed. R. Civ. P. 12(b)(1) where the district court lacks subject matter jurisdiction. Where there is "a factual attack on jurisdiction, such as in this case, the district court may consider matters outside the pleadings, and the presumption of truthfulness normally afforded a plaintiff under Rule 12(b)(1) does not apply." Briggs v. Briggs, 245 Fed. Appx. 934, 936 (11th Cir. 2007) (citing Lawrence v. Dunbar, 919 F.2d 1525, 1529 (11th Cir. 1990)). Accord McElmurray v. Consol. Gov't of Augusta-Richmond County, 501 F.3d 1244, 1251 (11th Cir. 2007).

> [W]hen the attack is factual, the trial court may proceed as it never could under 12(b)(6) or Fed. R. Civ. P. 56. Because at issue in a factual 12(b)(1) motion is the trial court's jurisdiction - its very power to hear the case - there is substantial authority that the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case. In short, no presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims.

Ishler v. Internal Revenue, 237 Fed. Appx. 394, 395 (11th Cir. 2007).

A complaint is subject to dismissal pursuant to Fed. R. Civ. P. 12(b)(6), if it does not "state a claim upon which relief can be granted."

When ruling on a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), all factual allegations in the complaint must be accepted as true, with all reasonable inferences construed in the light most favorable to the plaintiff. Wagner v. Daewoo Heavy Industries America Corp., 289 F.3d 1268, 1270 (11th Cir. 2002), vacated on other grounds, 298 F.3d 1228 (11th Cir. 2002); See also Beck v. Deloitte & Touche, 144 F. 3d 732, 735 (11th Cir. 1988). Conclusory allegations and unwarranted deductions of fact, however, are not admitted as true. Cotton v. Massachusetts Mut. Life Ins. Co., 402 F.3d 1267, 1278 (11th Cir. 2005).

Moreover, "[a] complaint is [ ] subject to dismissal under Rule 12(b)(6) when its allegations – on their face – show that an affirmative defense bars recovery on the claim." Marsh v. Butler County, Alabama, 268 F. 3d 1014, 1022 (11th Cir. 2001) (en banc) (citing Quiller v. Barclays American/Credit, Inc., 727 F. 2d 1067, 1069 (11th Cir. 1984) vacated on petition for rehearing, reinstated by 764 F. 2d 1400 (11th Cir. 1985).

A "court must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308 (2007). The existence of a jury verdict and final judgment in

a state court proceeding are matters of which a court may take judicial notice. United States v. Jones, 29 F. 3d 1549, 1553 (11th Cir. 1994) (explaining "that a court may take judicial notice of a document filed in another court not for the truth of the matters asserted in the other litigation, but rather to establish the fact of such litigation and related filings.") (internal quotations omitted). Accord, Young v. City of Augusta ex rel. DeVaney, 59 F. 3d 1160, 1167 n. 11 (11th Cir. 1995); Tuscano v. Evening Journal Association, 179 Fed. Appx. 621, 623 n. 3 (11th Cir. 2006); Universal Express, Inc. v. United States SEC, 177 Fed. Appx. 52, 53 (11th Cir. 2006) (holding a district court could properly take judicial notice of a pleading filed in another state because it is a public record); Selbst v. Coca Cola Company, 2008 U.S. App. Lexis 768, p. 4 (11th Cir. 2008) (recognizing that a district court could properly take judicial notice of SEC filings "'for the purpose of determining what statements the documents contain.'" quoting Bryant v. Avado Brands, Inc., 187 F. 3d 1271 (11th Cir. 1999)). See also, Shahar v. Bowers, 120 F. 3d 211, 214 (11th Cir. 1997) (en banc).

**B. This Court Lacks Federal Subject Matter Jurisdiction.**

Plaintiff seeks declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202. However, in order to obtain any remedy, Plaintiff must first establish that this Court has subject matter jurisdiction. Plaintiff has failed to even assert any basis upon which this Court has federal subject matter jurisdiction in his Complaint. On that basis

alone, Plaintiff's Complaint is subject to dismissal pursuant to Fed.R.Civ.P. 12(b)(6).

### C. This Court Lacks Subject Matter Jurisdiction pursuant to the Rooker-Feldman Doctrine.

Plaintiff requests that this Court declare the Court's Order of March 25, 2009, "void ab initio." Doc 1, p. 5. This Court lacks subject matter jurisdiction under the Rooker-Feldman doctrine. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923). Based on that doctrine, Plaintiff's claims are an impermissible collateral attack on Judge Kell's judicial decisions and should therefore be dismissed.

It is well established that litigants may not obtain review of a state court's final orders or judgments by filing an action in federal district court. Feldman, 460 U.S. at 482 (1983). The Eleventh Circuit has reaffirmed the validity of the Rooker-Feldman doctrine in dismissing federal claims that are intertwined with state court claims. Goodman v. Sipos, 259 F.3d 1327 (11th Cir. 2001). In Goodman, the plaintiffs filed a claim under 42 U.S.C. § 1983. However, the district court concluded that they were also "essentially challenging" an order issued by a juvenile court judge regarding custody. In affirming a decision issued by United States District Judge Clarence Cooper, the Eleventh Circuit reiterated that "[a] federal claim is inextricably intertwined with a state court judgment if the federal claim succeeds only to the extent that the state court

wrongly decided the issues before it." Goodman, 259 F.3d at 1331 (citing Siegel v. LePore, 234 F.3d 1163, 1172 (11th Cir. 2000) (en banc)).

In this case, even more so than in Goodman, Plaintiff is challenging the decision of a state court judge and nothing more. He has failed to state any federal claim. Plaintiff seeks injunctive relief against Judge Kell for alleged conduct directly related to the state court judgment and further seeks to declare as void the very contempt order entered against him in the state court proceedings. Such claims for federal relief are clearly within the ambit of the Rooker-Feldman doctrine in that they directly seek to have a federal court declare that a state court wrongly decided the issues before it. Goodman, 259 F.3d at 1331. See also Hirschhorn v. Ross, 250 Fed. Appx. 916 (11th Cir. 2007) (deciding that a request to declare a final state court judgment void was properly dismissed under the Rooker-Feldman doctrine); Blue Cross & Blue Shield of Maryland, Inc. v. Weiner, 868 F.2d 1550, 1556 (11th Cir. 1989) (noting that the Rooker-Feldman doctrine is applicable to impermissible requests for declaratory or injunctive relief). Plaintiff's Complaint contains no allegations regarding any action by Judge Kell outside of the underlying superior court contempt action from which he seeks an impermissible review from this Court. Accordingly, the action against Judge Kell should be dismissed for lack of subject matter jurisdiction.

**D. Abstention is Required by the Younger v. Harris Doctrine of Any Matters Pending before Judge Kell.**

To the extent the underlying state court matters from which Plaintiff seeks review are deemed pending, the principles of comity require dismissal. Federal courts ordinarily abstain from adjudicating cases where state proceedings are pending. Younger v. Harris, 401 U.S. 31 (1971). The Younger doctrine has been interpreted as "preventing federal courts from being the grand overseers of state courts and court-like administration." Wexler v. Lepore, 385 F.3d 1336, 1339 (11th Cir. 2004). In turn, abstention is proper where a federal injunction would 1) create an undue interference with state proceedings and 2) where the state proceedings at issue involve orders that are "uniquely in furtherance of the state courts' ability to perform their judicial functions." Id. The Supreme Court has specifically recognized the importance of a state's interest in its contempt process and concluded that federal interference in such proceedings creates an undue interference warranting abstention. Juidice v. Vaile, 430 U.S. 327, 335-36 (1977). Similarly, abstention is proper in ongoing state domestic and custody proceedings because of the important underlying state policies in such matters. See Liedel v. Juvenile Court of Madison County, Alabama, 891 F.2d 1542, 1546 (11th Cir. 1990) (holding that federal district courts may not interfere with ongoing child custody proceedings). See also Bahji Amelia Adams v. State of Georgia, 2008 U.S. Dist. LEXIS 16920, at *8-9 (N.D. Ga., March 5, 2008) (abstention was warranted

where plaintiff alleged fraud and due process violations against a state court judge and sought to challenge the judge's decisions in an ongoing state custody proceeding). In the instant case, Plaintiff seeks to overturn a contempt order entered against him in a state domestic matter by having it declared void and also seeks an injunction against Judge Kell actions in the future in this and other unrelated proceedings before him. To grant such relief would require an undue interference by this Court in a state court's domestic and contempt process and, in turn, would impinge upon Judge Kell's judicial function in such proceedings. See Shapiro v. Ingram, No. 06-10834, 2006 U.S. App. LEXIS 26660, at *940 (11th Cir. October 25, 2006) (unpublished) (concluding that federal interference into a judge's findings of contempt or other related evidentiary or administrative rulings creates an undue interference requiring abstention). Thus, comity concerns warrant this Court's abstention as to any matters pending before Judge Kell.

**D. The Plaintiff Lacks Standing as There is No Active Case or Controversy**

On May 4, 2009, Judge Kell found that Plaintiff had purged himself of contempt with regard to his February 20, 2009 order requiring Plaintiff to pay child support arrearages and recalled the bench warrant filed on March 25, 2009. (Exhibit H to Complaint, Doc. 1). Plaintiff filed this action on May 19, 2009, asking this Court to declare Judge Kell's March 25, 2009 order as "void ab initio." (Doc. 1, p.5).

For Plaintiff to proceed in the instant action there is a requirement that there be an actual case or controversy to confer jurisdiction upon this Court. See 31 Foster Children v. Bush, 329 F.3d 1255, 1263 (11th Cir. 2003). This Court does not have the authority to decide a case that is moot. See Williams v. County of Forsyth, 2008 US Dist. LEXIS 74428 (N.D. Ga. Sept. 26, 2008). "The doctrine of mootness is derived from this limitation because an action that is moot cannot be characterized as an active case or controversy." Williams at *16 (quoting Adler v. Duvall County School Board, 112 F.3d 1475, 1478 (11th Cir. 1997).

Plaintiff paid the child support arrearage ordered by Judge Kell on February 20, 2009, and thus purged himself of the contempt order issued on March 25, 2009. The bench warrant included within the March 25, 2009 contempt order was recalled on May 4, 2009, two weeks before this instant action was filed. Because Plaintiff has complied with the judgment of contempt by payment of the amount required, his request that this Court order that contempt order "void ab initio" is moot. See e.g. Gabriel v. Gabriel, 219 Ga. 290, 133 S.E.2d 25 (1963) ("It now appearing that the respondent has complied with the judgment of contempt by payment of the amount required, his assignment of error upon such contempt judgment is moot, and the writ of error is therefore dismissed").

Additionally, Plaintiff's requests for declaratory relief are improper. There must be an actual controversy for the Court to award declaratory relief. See Emory v. Peeler, 756 F.2d 1547, 1551-52

(11th Cir. 1985). Further, declaratory relief is only available when necessary to protect the parties from the risk of undirected future action and to permit determination of a controversy before rights are violated. See 28 U.S.C.S. § 2201(a). The intent of the Declaratory Judgment Act is to allow an alternative to injunctive relief. See United States v. Dorgan, 522 F.2d 969, 973 (8th Cir. N.D. 1975). A declaratory ruling with respect to an order rendered before these proceedings were commenced does not satisfy the requirement of an actual controversy.

Finally, this Court is without jurisdiction to hear Plaintiff's claims for injunctive relief because Plaintiff does not have standing to assert such a claim. The United States Supreme Court has stated:

> The duty of this Court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.

Mills v. Green, 159 U.S. 651, 653 (1895).

First and foremost, Plaintiff's request for injunctive relief is not specific enough to warrant relief. The Supreme Court has interpreted FED. R.CIV.P. 65 (d) to require that "[e]very order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail...the act or acts sought to be restrained."

Schmidt v. Lessard, 414 U.S. 473,475 (1974). The Court further noted that, "[t]he Rule was designed to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood." Id. at 476.

Here, as in Schmidt, Plaintiff seeks injunctive relief that fails to establish the precise actions that must be undertaken to avoid running afoul of such an order and subjecting the State Defendants to citations of contempt. See Burton v. City of Belle Glade, 178 F.3d 1175, 1200-1201 (11th Cir. 1999) ("[A]n injunction must contain an operative command capable of enforcement." (citations omitted)). Plaintiff seeks injunctions that would prohibit Judge Kell "from misusing his power," but fails to identify any specific conduct or action he seeks to enjoin. His superficial request for injunctive relief lacks sufficient specificity to provide the Judge Kell with notice of the specific behavior he is to avoid – aside, presumably, from holding Plaintiff in contempt -- and thus Plaintiff's request should not be considered by the Court.

In addition, Plaintiff cannot establish that there is a substantial likelihood of future injury and, therefore, he lacks standing to seek injunctive relief. Injunctions regulate future conduct, and a party has standing to seek injunctive relief only when a real or implied threat of future injury is alleged. Shotz v. Cates, 256 F.3d 1077, 1081 (11th Cir. 2001) (holding disabled persons seeking an injunction to remove hindrances to their attendance of court proceedings lacked Article III standing because

they had not alleged facts showing any likelihood of future injury). Courts have consistently held that where there is no substantial likelihood of future injury there is no standing to seek injunctive relief. See Warth v. Seldon, 422 U.S. 490, 508 (1975); Cone v. Florida Dept. of Transportation, 921 F. 2d 1190, 1204 (11th Cir. 1991).

Plaintiff's Complaint is void of any allegations to support even an inference of a real and immediate threat of future injury. Indeed, Plaintiff cannot meet this burden because he cannot aver with any certainty that he will be subject to any contempt by Judge Kell. As a result, he lacks standing to pursue injunctive relief.

**F. Insofar as Plaintiff Requests Injunctive Relief, Plaintiff Fails to State A Claim under 42 U.S.C. § 1983 Upon Which Relief May Be Granted**

42 U.S.C. § 1983 provides that

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, *except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be*

*granted unless a declaratory decree was violated or declaratory relief was unavailable....*

42 U.S.C. § 1983 (1979 and Supp. 1996). Here, Plaintiff's claims arise from actions taken by Judge Kell in his judicial capacity. Since Plaintiff has not alleged that a declaratory decree was violated or unavailable, Plaintiff may not seek an injunction under Section 1983.

Even if Section 1983 provided a basis upon which Plaintiff could seek injunctive relief, such relief may not be obtained against Judge Kell in his individual capacity.

It has long been established that the Eleventh Amendment bars a suit against the State or one of its agencies, departments or officials, absent a waiver by the State or a valid Congressional override, when the State is the real party in interest or when any monetary recovery would be paid out of state funds. Kentucky v. Graham, 473 U.S. 159, 169 (1985). The United States Supreme Court has construed the Eleventh Amendment jurisdictional bar to extend to federal suits against a non-consenting state "by her own citizens as well as citizens of another state." Port Authority Trans-Hudson v. Feeney, 495 U.S. 299 (quoting Pennhurst State School & Hospital v. Halderman, 465 U.S. 89 (1984)(Pennhurst II)).

The State of Georgia has not consented to be sued in federal court under Section 1983 or Georgia state law. Ga. Const. Art. 1 § 2 ¶ 9(e) and (f). Therefore, the State of Georgia has not waived the immunity provided it and its officials under the Eleventh

Amendment.

An exception to Eleventh Amendment immunity does exist under Ex Parte Young, 209 U.S. 123 (1908) and allows suits against individuals sued in their **official capacity** seeking prospective injunctive relief for violations of federal law. Summit Medical Assocs., P.C. v. Pryor, 180 F.3d 1326, 1336 (11th Cir. 1999). The exception applies only to suits against individuals sued in their "official capacities" because "[a] state, a state agency, and a state official sued in his official capacity are not 'persons' within the meaning of § 1983, thus damages are unavailable; but a state official sued in his official capacity is a person for purposes of § 1983 when prospective relief, including injunctive relief, is sought." Edwards v. Wallace Comm. Coll., 49 F.3d 1517, 1524 n.9 (11th Cir. 1995). It is for this reason that when the relief sought is an order concerning official duties, a claim form injunctive relief may be brought against government officials only in their official capacity, and not in their individual capacity. Wu v. Thomas, 863 F.2d 1543, 1550 (11th Cir. 1989).

In this case, Plaintiff seeks injunctive relief against Judge Kell relating to his official duties as a judge for the Superior Court of Cobb County, Georgia. As such, Plaintiff's claims cannot be brought against Judge Kell in his individual capacity.

### G. Judge Kell Is Absolutely Immune From Suit Under The Doctrine Of Judicial Immunity.

To the extent Plaintiff seeks damages against Judge Kell, he is shielded by absolute judicial immunity. Since Plaintiff has complained only of actions taken by Judge Kell in his official role as a Georgia Superior Court Judge, such immunity shields Judge Kell from liability in this action. Pierson v. Ray, 386 U.S. 547 (1967).

Judicial officers have been shielded from liability for acts done in their judicial capacity "from the earliest dawn of jurisprudence down to the latest reported cases." West End Warehouses v. Dunlap, 141 Ga. App. 333 (1977); Smith v. Hancock, 150 Ga. App. 80 (1979); Chamberlain v. Thompson, 165 Ga. App. 807 (1983). The rationale for judicial immunity is the recognition that "[i]t is ultra-important in our democracy to preserve the doctrine of judicial immunity to enable our judges to exercise within their lawful jurisdiction untrammeled determination without apprehension of subsequent damage suits." Hill v. Bartlett, 126 Ga. App. 833, 840 (1972). The United States Supreme Court has ruled a number of times that the doctrine of judicial immunity is "firmly established," even for acts allegedly done in excess of authority, erroneously, maliciously or corruptly. Pierson, 386 U.S. at 554; Imbler v. Pachtman, 424 U.S. 409, 419 n. 13 (1976). Further, judges not acting in the clear absence of all jurisdiction are immune from damages, even when those claims are based on charges of conspiracy in their rulings. Dykes v. Hosemann, 776 F.2d 942 (11th Cir. 1985) (en banc).

Judicial immunity protects judges against both state law claims and civil rights actions. This

immunity is overcome only in two limited sets of circumstances: (1) where a judge is being sued upon non-judicial actions, and (2) where the judge has taken judicial action in the complete absence of all jurisdiction. Mireles v. Waco, 502 U.S. 9, 11-12 (1991). Clearly, neither exception is applicable here.

In the instant case, all of the allegations against Judge Kell concern his judicial decisions entered in a case pending before him. Judge Kell's actions were taken in his capacity as a judge and comprise judicial acts. Accordingly, Judge Kell is entitled to judicial immunity and dismissal of this action against him.

## III. CONCLUSION

For the above and foregoing reasons, Judge Kell respectfully moves this Court to dismiss Plaintiffs' action with prejudice.

Respectfully submitted this 15th day of June, 2009.

THURBERT E. BAKER 033887
Attorney General

KATHLEEN M. PACIOUS 558555
Deputy Attorney General

S/ Devon Orland
DEVON ORLAND 401250
Sr. Assistant Attorney General

/s/ Holly Loy Smith

Holly Loy Smith 036299
Assistant Attorney General

## APPENDIX U

**IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION**

**JASON F. MCGEE,**
**Plaintiff,**

**Civil Action No. 1:09-CV-1338**

**v.**
**THE HONORABLE CARLTON L. KELL, in his individual capacity,**
**Defendant.**

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**DEFENDANT THE HONORABLE CARLTON L. KELL'S MOTION TO DISMISS BY SPECIAL APPEARANCE**

COMES NOW Defendant the Honorable Carlton L. Kell, by special appearance and without submitting to the jurisdiction of the Court, by and through the Attorney General of the State of Georgia, and respectfully files this Motion to Dismiss Plaintiff's Complaint. Defendant shows that Plaintiff fails to state a claim upon which relief may be granted, this Court lacks jurisdiction over Plaintiff's claims pursuant to the doctrines of Rooker-Feldman and Younger v. Harris, the Plaintiff lacks standing as there is no active case or controversy, and Judge Kell is entitled to absolute judicial immunity.

In support of his Motion, Defendant respectfully submits his Brief in Support, filed contemporaneously herewith.

Respectfully submitted this 15th day of June, 2009.

THURBERT E. BAKER 033887
Attorney General

KATHLEEN M. PACIOUS 558555
Deputy Attorney General

S/ Devon Orland
DEVON ORLAND 401250
Sr. Assistant Attorney General

/s/ Holly Loy Smith
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## APPENDIX V

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JASON F. MCGEE,
Plaintiff,
v. Case No. 1:09-CV-1338-TWT
THE HONORABLE CARLTON
L. KELL, in his individual
capacity,
Defendant.

**COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF AND AN INDEPENDENT ACTION IN EQUITY**

1. This is an action for declaratory relief pursuant to Title 28, United States Code, Section 2201.

2. This is an action for declaratory relief pursuant to Title 28, United States Code, Section 2202.

3. This is an action for injunctive relief, pursuant to Rule 65 of the Federal Rules of Civil Procedure.

4. This is an independent action in equity for relief from the **ORDER OF INCARCERATION** filed on March 25, 2009, in The Superior Court of Cobb County Georgia, in **CIVIL ACTION FILE NO. 08-1-10450-49. EXHIBIT D**

**JURISDICTION**

5. Plaintiff brings this suit pursuant to Title 42, United States Code, Section 1983 for violations of certain protections, guaranteed by the 14th Amendment of the United States Constitution, by the defendant under color of law in his capacity as a Judge in the Superior Court of Cobb County Georgia .

6. Jurisdiction is based upon federal question jurisdiction pursuant to Title 28, United States Code, Section 1331.

7. Jurisdiction is based upon federal question jurisdiction pursuant to Title 28, United States Code, Section 1331(a).

8. Jurisdiction is based upon federal question jurisdiction pursuant to Section 1 of the 14th Amendment of the United States Constitution.

9. This court has supplemental jurisdiction over plaintiff s common law claims, infra.

**VENUE**

10. Venue is proper pursuant to Title 28, United States Code, Section 1391.

11. Claims in this action arise out of acts undertaken in Cobb County Georgia, which is in The Atlanta Division of The United States District Court for The Northern District of Georgia.

12. Plaintiff s injuries were suffered in Cobb County Georgia, which is in The Atlanta Division of The United States District Court for The Northern District of Georgia.

13. Plaintiff is a citizen of the State of Georgia.

14. Plaintiff resides at the following address:

290 Christopher Drive
Hiram, GA 30141

15. The Honorable Carlton L. Kell is a citizen of the State of Georgia.

16. The Honorable Carlton L. Kell is a Cobb County Georgia Superior Court Judge .

17. The Honorable Carlton L. Kell, has an office at:

SUPERIOR COURT OF COBB COUNTY
30 WADDELL STREET
MARIETTA, GA 30090-9642

18. On March 12, 2009, Plaintiff filed a **MOTION FOR NEW TRIAL** in **CIVIL ACTION FILE NO. 08-1-10450-49. EXHIBIT A**

19. On March 13, 2009, Plaintiff removed **CIVIL ACTION FILE NO. 08-1-10450-49**, from The Superior Court of Cobb County Georgia, to The United States District Court For The Northern District of Georgia Atlanta Division in **Case No. 1 09- CV- 0690-TWT. EXHIBIT B**

20. On March 13, 2009, Plaintiff filed a **NOTICE OF FILING OF NOTICE OF REMOVAL** in **CIVIL ACTION FILE NO. 08-1-10450-49. EXHIBIT C**

**CAUSE OF ACTION**

21. The Honorable Carton L. Kell deprived the Plaintiff of $5850.00 without due process of law.

22. The Honorable Carlton L. Kell misused his power, possessed by virtue of state law clothed with the authority of state law to direct "The Sheriff of Cobb County or his lawful deputy, and any and all other law enforcement officers of the State of

Georgia," to immediately arrest the Plaintiff and incarcerate him.

**REMOVAL JURISDICTION**

23. The removal of a case from state court to federal court effects a transfer of the entire action, including all the parties and all the claims, to the federal court.

24. After compliance with the removal statute[,] the jurisdiction of the [s]tate court is suspended until there has been a remand.

25. The **ORDER OF INCARCERATION** filed on March 25, 2009, in **CIVIL ACTION FILE NO. 08-1-10450-49** is void. **EXHIBIT D**

26. On April 3, 2009, Plaintiff filed a copy of a **NOTICE OF INTENT TO FILE A LAWSUIT** in **CIVIL ACTION FILE NO. 08-1-10450-49. EXHIBIT E**

27. On April 7, 2009, Plaintiff filed a copy of a **MOTION FOR DECLATORY JUDGMENT AND INJUNCTIVE RELIEF** in **CIVIL ACTION FILE NO. 08-1-10450-49. EXHIBIT F**

28. On April 27, 2009, an **ORDER** remanding **CIVIL ACTION FILE NO. 08-1-10450-49** back to the Superior Court of Cobb County Georgia was docketed. **EXHIBIT G**

29. On May 5, 2009, an **ORDER TO RECALL BENCH WARRANT** was docketed in **CIVIL ACTION FILE NO. 08-1-10450-49. EXHIBIT H**

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury on all claims.

## RELIEF

**DECLARATORY RELIEF**

Plaintiff incorporates all of the facts of paragraphs 1 to 29.

Plaintiff moves this Honorable Court to issue an **ORDER**:

a. Declaring the **ORDER OF INCARCERATION** filed on April 25, 2009, in The Superior Court of Cobb County Georgia, in **CIVIL ACTION FILE NO. 08-1-10450-49** is void ab initio.

**INJUNCTIVE RELIEF**

Plaintiff incorporates all of the facts of paragraphs 1 to 29.

Plaintiff moves this Honorable Court to issue an injunction enjoining:

b. The Honorable Carlton L. Kell from misusing his power, possessed by virtue of state law clothed with the authority of state law to order any person to violate the Laws of the United States of America.

c. The Honorable Carlton L. Kell from misusing his power, possessed by virtue of state law clothed with the authority of state law to deprive any person of Equal Protection under the Law.

**COMPENSATORY DAMAGES**

Plaintiff incorporates all of the facts of paragraphs 1 to 29.

Plaintiff moves the Court to issue an **ORDER** requiring:

d. That any property taken from Plaintiff under the color of state law be returned to the Plaintiff.

e. Plaintiff be awarded his costs of this litigation.

f. Plaintiff be granted relief this Court deems appropriate and just.

**AD DAMNUM CLAUSE**

Based upon the foregoing pleaded facts, Plaintiff moves this Honorable Court to issue an **ORDER** awarding Plaintiff compensatory and punitive damages in the amount of One Hundred Thousand Dollars ($100,000.00).

Respectfully Submitted,
Dated: May 19, 2009

/S/_____
Jason F. McGee, Pro Se

## APPENDIX W

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DEBBIE D. MCGEE,
PLAINTIFF,
v. Case No. 08-1-10450-49
JASON F. MCGEE,
DEFENDANT,

**NOTICE OF INTENT TO FILE A LAWSUIT**

1. On February 20, 2009, The Honorable Judge Kell issued an **ORDER** alleging Mr. McGee is in Contempt of Court.

2. On March 12, 2009, Mr. McGee filed a **MOTION FOR NEW TRIAL** in The Superior Court of Cobb County Georgia for Civil Action File No. 08-1-10450-49.

3. On March 13, 2009, Mr. McGee filed a **NOTICE OF REMOVAL** for Civil Action File No. 08-1-10450-49 **IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION.**

4. On March 13, 2009, Mr. McGee filed a **NOTICE OF FILING OF NOTICE OF REMOVAL** plus a copy of the **NOTICE OF REMOVAL** in The Superior Court of Cobb County Georgia for Civil Action File No. 08-1-10450-49.

**ABUSE OF DISCRETION**

5. On March 25, 2009, The Honorable Judge Kell, issued an **ORDER OF INCARCERATION** for Mr. McGee in The Superior Court of Cobb County Georgia for Civil Action File No. 08-1-10450-49.

6. On Page 5, Paragraph 5 of the **NOTICE OF FILING OF NOTICE OF REMOVAL**, Mr. McGee made it clear:

7. "After removal is effected "the state court shall proceed no further unless and until the case is remanded." per Title 28, United States Code, Section 1447 (d)."

8. The Honorable Judge Kell has, once again, shown that he only follows the Laws that he wants to.

9. On Page 2 of the **ORDER OF INCARCERATION,** Carlton L. Kell, acting a Cobb County Superior Court Judge, listed Mr. McGee's "address as 290 Christopher Drive, Hiram, Georgia 30141".

10. Either The Honorable Judge Kell is ignorant of the Laws of the United States of America or he is using his position, as a Cobb County Superior Court Judge, enforce his own Laws.

11. The Honorable Judge Kell used the Authority granted to him by the Laws of Georgia to deprive Mr. McGee of his Constitutional Rights of Equal Protection Under Law.

12. The Honorable Judge Kell's actions leave no doubt that Mr. McGee's Constitutional Rights are subservient to his **UNLAWFUL** Authority.

13. The Honorable Judge Kell does not have any Legal Jurisdiction under the Laws of the State of

Georgia to issue any **ORDER**s in Civil Action File No. 08-1-10450-49 until the case is remanded from **THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION.**

14. The Honorable Judge Kell does not have any Legal Jurisdiction under the Laws of the United States of America to issue any **ORDER**s in Civil Action File No. 08-1-10450-49 until the case is remanded from **THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION.**

**FRAUD AND PERJURY**

15. Melvin Drukman **LIED** in the Superior Court of Cobb County Georgia to convince the Court issue **ORDER**s depriving Mr. McGee of his Property Under The Color of Law.

16. The Superior Court of Cobb County Georgia ignored Mr. McGee's SWORN Allegations that Debbie McGee made False Statements under **OATH.**

17. The Superior Court of Cobb County Georgia ignored Mr. McGee's **SWORN** Allegations that Debbie McGee Debbie McGee filed several False Pleadings under **OATH.**

**RELIEF SOUGHT**

18. Mr. McGee has sought Relief, to no avail, using the following methods:

A. Filing **MOTION**s in certain Cobb County Courts that were ignored.

B. Filing a **COMPLAINT** with the Georgia State Bar against Attorney Melvin

Drukman.

C. Writing a letter to the Cobb County District Attorney.

D. Writing a letter to the Honorable S. Lark Ingram.

E. Filing a **COMPLAINT** with the Judicial Qualifications Commission against the Honorable Judge Kell.

F. Filing a **COMPLAINT** with the Judicial Qualifications Commission against certain Cobb County Judges.

G. Mr. McGee's **MOTION FOR RECUSAL** were denied by the Honorable Judge Kell in 2 separate cases prior to Mr. McGee filing of the **COMPLAINT FOR DECLARATORY JUDGEMENT AND OTHER RELIEF AND AN INDEPENDENT ACTION IN EQUITY** in Case No. 1 08-CV-1433-TWT **IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION** on April 16, 2008.

H. Filing the **APPELLANT'S OPENING BRIEF** in CASE NO. 08-17063-E **ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT.**

I. Removing Civil Action File No. 08-1-

10450-49 from the Superior Court of Cobb County Georgia to **THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION**

19. The Honorable Judge Kell chose to preside over a Contempt Case filed by Attorney Melvin Drukman after Mr. McGee challenged 4 **UNLAWFUL ORDERs** issued by him **IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION.**

20. The **ORDER OF INCARCERATION** is nothing more than an **UNLAWFUL** Pay Off to Melvin Drukman Under The Color of State Law.

21. Mr. McGee cannot be in **CONTEMPT** of a Court **ORDER** that is not in Compliance with Georgia Law.

22. Mr. McGee experiences show the difference between a **LIE** and the **TRUTH,** in The Superior Court of Cobb County Georgia, is a Judge's Signature.

**LEGAL BASIS FOR RELIEF**

23. The law is well-settled that judges are indeed entitled to immunity from suit for damages when acting in their judicial capacity unless they act in the "clear absence of all jurisdiction." **Bolin v. Story, 225 F.3d 1234, 1239 (11th Cir. 2000)**.

24. "[T]he Due Process Clause was intended to prevent government officials from abusing their power, or employing it as an instrument of

oppression." **County of Sacramento v. Lewis, 523 U.S. 833, 846, 118 S. Ct. 1708, 1716 (1998) (internal quotations and citations omitted)**.

25. The substantive component of the Due Process Clause "protects individual liberty against 'certain government actions regardless of the fairness of the procedures used to implement them.'" **Collins v. City of Harker Heights, 503 U.S. 115, 125, 112 S. Ct. 1061, 1068 (1992) (quoting Daniels v. Williams, 474 U.S. 327, 331, 106 S. Ct. 662, 665 (1986))**.

26. In **Scheuer v. Rhodes, 416 U.S. 232, 237 (1974)**, The United States Supreme Court stated

"since **Ex parte Young, 209 U.S. 123 (1908)**, it has been settled that the Eleventh Amendment provides no shield for a state official confronted by a claim that he had deprived another of a federal right under the color of state law. Ex parte Young teaches that when a state officer acts under a state law in a manner violative of the Federal Constitution, he "comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States." Id., at 159-160."

27. In **Scheuer v. Rhodes, 416 U.S. 232, 249 (1974)**, The United States Supreme Court stated "When there is a substantial showing that the exertion of state power has overridden private rights secured by that Constitution, the subject

is necessarily one for judicial inquiry in an appropriate proceeding directed against the individuals charged with the transgression." See Sterling v. Constantin, 287 U.S., at 397."

28. It is firmly established that judges enjoy absolute immunity from suit for all "judicial acts" unless they have acted "in the clear absence of all jurisdiction." **Stump v. Sparkman, 435 U.S. 349, 35657 (1978)**.

29. This immunity "protect[s] judicial independence by insulating judges from vexatious actions prosecuted by disgruntled litigants." **Forrester v. White, 484 U.S. 219, 225 (1988) (citing Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 348 (1872))**.

30. In **Tower v Glover, 104 S. Ct. 2820, 2826 (1984)**, the United States Supreme Court stated "We conclude that state public defenders are not immune from liability under Sec. 1983 for intentional misconduct, "under color of" state law, by virtue off alleged conspiratorial action with state officials that deprives their clients of federal rights."

## PARTIES TO BE NAMED IN THE SUIT

31. The Honorable Carlton L. Kell, Superior Court Judge of Cobb County Georgia, in his Individual Capacity.

32. Cobb County State of Georgia.

33. Melvin Drukman.

34. Debbie D. McGee

**QUESTIONS**

35. Is Perjury by Debbie McGee acceptable in the Superior Court of Cobb County Georgia?

36. Will an Attorney lose a Case to a Pro Se party in The Superior Court of Cobb County Georgia based only on the Facts and the Law?

37. Is Melvin Drukman winning cases in The Superior Court of Cobb County Georgia because of the Judge he appears before?

38. Is a nice sounding **LIE** of a higher precedence than the **TRUTH** in certain Cobb County Courts?

39. Is The Honorable Judge Kell enforcing the Laws of the State of Georgia or his own Law?

40. Will The Honorable Judge Kell respect the **OPINION** of **THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT** if the **ORDER**s issued by him are declared Void?

41. Will The Honorable Judge Kell respect the **OPINION** of **THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT** if the Decision is not favorable for Melvin Drukman?

Respectfully submitted,

This 3rd day of April 2009.

/S/_____
Pro Se

## APPENDIX X

**IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION**

**DEBBIE D. MCGEE,**
**PLAINTIFF,**
v.

Case No. 08-1-10450-49

**JASON F. MCGEE,**
**DEFENDANT.**

**MOTION FOR DECLATORY JUDGMENT AND INJUNCTIVE RELIEF**

1. This is an action for declaratory relief pursuant to Title 28, United States Code, Section 2201.

2. This is an action for declaratory relief pursuant to Title 28, United States Code, Section 2202.

3. This is an action for injunctive relied pursuant to Rule 65 of the Federal Rules of Civil Procedure.

4. This is an independent action in equity for relief from the **ORDER OF INCARCERATION** filed on March 25, 2009 in The Superior Court of Cobb County Georgia in Civil Action File No: 08-1-10450-49 by Carlton L. Kell, acting without Jurisdiction, as a Cobb County Superior Court Judge. **EXHIBIT FC-14**

**JURISDICTION**

5. Jurisdiction is based upon federal question jurisdiction pursuant to Title 28, United States Code, Section 1331.

6. Jurisdiction is based upon federal question jurisdiction pursuant to Title 28, United States Code, Section and 1331(a).

7. Jurisdiction is based upon federal question jurisdiction pursuant to the Section 1 of the 14th Amendment of the United States Constitution.

8. Jurisdiction is based upon federal question jurisdiction pursuant to Title 42, United States Code, Section 1983.

9. Jurisdiction is pursuant to the provisions of Title 28, United States Code, Section 1441 (b).

**VENUE**

10. Venue is proper pursuant to Title 28, United States Code, Section 90 (a) (2).

11. Venue is proper pursuant to Tide 28, United States Code, Section 1441(a).

**NOTICE OF REMOVAL**

12. On March 12, 2009, Mr. McGee filed a **MOTION FOR NEW TRIAL** in The Superior Court of Cobb County Georgia for Civil Action File No. 08-1-10450-49.

13. On March 13, 2009, Mr. McGee filed a **NOTICE OF REMOVAL** for Civil Action File No. 08-1-10450-49 **IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION**.

14. On March 13, 2009, Mr. McGee filed a **NOTICE OF FILING OF NOTICE OF REMOVAL** in The Superior Court of Cobb County Georgia for Civil Action File No. 08-1-10450-49.

15. A copy of the **NOTICE OF REMOVAL** was filed in The Superior Court of Cobb County Georgia on March 13, 2009, pursuant to Title 28, United States Code, Section 1446 (d).

**KNOWLEDGE OF FACTS**

16. This Court has sufficient knowledge to determine whether Carlton L. Kell used his position as a Cobb Superior Court Judge to deprive Mr. McGee of his Constitutional Rights.

17. This Court's refusal to address Mr. McGee's **MOTION FOR DECLATORY JUDGMENT AND INJUNCTIVE, RELIEF**, will leave the impression that it is trying to avoid documenting the **TRUTH** to protect certain parties .

18. This Court's refusal to address Mr. McGee' s **MOTION FOR DECLATORY JUDGMENT AND INJUNCTIVE RELIEF** will leave the impression that the Honorable Judge Kell has more Authority than the Laws of the United States.

19. If this Court refuses to address Mr. McGee's **MOTION FOR DECLATORY JUDGMENT AND INJUNCTIVE RELIEF**, it will leave the impression that the Honorable Judge Kell has more Authority then the Laws of the State of Georgia.

**LEGAL BASIS**

20. The major legal grounds for relief are founded on 42 U.S.C. § 1983 and a pendent state claim for

damages.

21. The federal statute protects all persons from "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws", if those deprivations one caused by persons who are acting under color of state law.

22. Pendent claims exist by force of state law and the federal courts may entertain them in the interest of judicial economy. See United Mine Workers v. Gibbs, 383 U. S. 715, 86 S.Ct.1130, 16 L.Ed.2d 218 (1966); Miller v. Carson, 5 Cir., 1977, 563 F.2d 757, 760-62.

23. Declaratory relief may be granted regardless of availability of an injunction. Howe v. Ellenbecker, D .S.D.1991, 774 F.Supp.1224, affirmed 8 F.3d 1258, certiorari denied 114 S.Ct.1373, 511 U.S. 1005, 128 L.Ed2d 49.

24. Exhaustion of state court remedies is not a prerequisite to an action under this section or § 1983 of Title 42. Payne v. Whitmore, N.D.Cal.1971, 325 F.Supp. 1191.

25. Action for declaratory relief properly should be entertained where judgment will serve useful purpose in clarifying and settling legal relations, and where it will terminate proceedings and afford relief from uncertainty, insecurity and controversy. Twin City Federal Sav. and Loan Ass'n v. Gelhar, D.C.Minn.1981, 525 F.Supp. 802, affirmed 681 F.2d 528.

**DECLATORY RELIEF**

Plaintiff incorporates herein by reference all of the facts of foregoing paragraphs 1 to 25.

Plaintiff moves this Honorable Court to issue an **ORDER**:

a. Declaring the **ORDER OF INCARCERATION** filed on March 25, 2009 in The Superior Court of Cobb County Georgia in Civil Action File No: 08-1-10450-49 by Carton L. Kell, acting without Jurisdiction, as a Cobb County Superior Court Judge is void.

b. Stating Findings of Facts and Conclusions of Law.

**INJUNCTIVE RELIEF**

Plaintiff incorporates herein by reference all of the facts of foregoing paragraphs 1 to 25.

Plaintiff moves this Honorable Court to issue an injunction enjoining:

c. The Honorable Judge Kell from issuing any **ORDER**s regarding Civil Action File No. 08-1-10450-49, until Case No. 08-1-10450-49 is remanded back to the Superior Court of Cobb County Georgia unless it is an **ORDER** releasing Mr. McGee from Incarceration.

d. Any Cobb County Superior Court Judge from issuing any **ORDER**s regarding Civil Action File No. 08-1-10450-49, until Case No. 08-1-1050-49 is remanded back to the Superior Court of Cobb County Georgia unless it is an **ORDER** releasing Mr. McGee from Incarceration.

e. Carlton L. Kell from depriving Mr. McGee of his Constitutional Rights of Equal

Protection Under Law while acting as a Cobb County Superior Court Judge.

f. Any Georgia Law Enforcement Officer from ' Arresting Mr. McGee based upon an **UNLAWFUL ORDER** issued by the Superior Court of Cobb County Georgia.

g. The Honorable Judge Kell from adjudicating any Actions involving Mr. McGee, Debbie McGee and Melvin Drukman until further NOTICE from this Court.

h. Any other relief this Court finds Just.

Respectfully submitted,
This 3rd day of April 2009.

/S/_____
Jason F. McGee, Pro Se

## APPENDIX Y

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DEBBIE D. MCGEE
Plantiff.
v. CASE NO. 1-09-CV-0690-TWT
JASON F. MCGEE
Defendant

**NOTICE OF REMOVAL**

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE THAT Defendant Jason F. McGee removes to this Court, the Sate Court action described below.

1. On February 20, 2009, in Civil Action File No. 08-1-10450-49, The Honorable Judge Kell signed an **ORDER** alleging the Defendant is in willful Contempt of the parties original Divorce Decree.

2. On April 16, 2008, IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION, the Defendant filed a **MOTION FOR TEMPORARY INJUNCTION** in Case No. 108-CV-1433-TWT.

3. Defendant filed a **MOTION TO AMEND RECORD**, IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, requesting a review the District Court's denial of his **MOTION FOR TEMPORARY INJUNCTION**.

**ALLEGATIONS OF FRAUD BY ATTORNEY MELVIN DRUKMAN AND PLAINTIFF**

4. The Child Support Payments, for the Defendant, were modified in the **TEMPORARY ORDER REDUCING CHILD SUPPORT PAYMENTS TO 0$** in Civil Action File No. 06-1-07409 in The Superior Court Of Cobb County Georgia on November 8, 2006.

5. The Superior Court of Cobb County Georgia reinstated the Defendant's Child Support Payments after a Fraudulent Act was committed by Attorney Melvin Drukman.

6. The Superior Court of Cobb County Georgia reinstated the Defendant's Child Support Payments after Fraudulent Acts were committed by the Plaintiff.

7. The reinstated Child Support **ORDER** is not in compliance with Georgia Law.

8. Attorney Melvin Drukman misstated the Facts in the Attachment For Contempt.

9. Attorney Melvin Drukman, once again, is attempting to use the Superior Court of Cobb County Georgia for his Unjust Enrichment.

10. Defendant is allegedly in Contempt of Court because he has shown that:

A. The Honorable Judge Kell issued several Unlawful **ORDER**s based on unsworn Lies of Attorney Melvin Drukman made in The Superior Court of Cobb County Georgia.

B. Defendant was threatened with arrest because he initially did not comply with an **ORDER** the Honorable Judge

Kell had no Legal Authority to issue.

C. There is undisputable proof that the Plaintiff has committed Perjury in certain Cobb County Courts.

D. Plaintiff has not been prosecuted for committing Perjury in any Cobb County Court.

E. A Lie, told by Attorney Melvin Drukman, in The Superior Court of Cobb County Georgia, had a higher precedence in the Court of the Honorable Judge Kell than the First Person Truth of the Defendant.

F. Defendant is seeking Relief from **ORDER**s issued by the Honorable Judge Kell IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT.

G. The Honorable Judge Kell has a vested interest in keeping the TRUTH out of the Federal Court System.

**EQUAL PROTECTION UNDER LAW**

11. In **ZINERMON v. BURCH 494 U.S. 113, 125,** The United States Supreme Court made it clear: "As was noted in Monroe, in many cases there is "no quarrel with the state laws on the books," id., at 176; instead, the problem is the way those laws are or are not implemented by state officials."

12. The Superior Court of Cobb County Georgia selectively applied the Laws of the State of Georgia for the benefit of Attorney Melvin Drukman.

13. The Superior Court of Cobb County Georgia selectively applied the Laws of the State of Georgia

for the benefit of the Plaintiff.

14. A **MOTION TO VACATE AND SET ASIDE JUDGMENT** filed on May 10, 2007, in The Superior Court of Cobb County Georgia, on behalf of the Defendant, was ignored.

**JURISDICTION**

15. Jurisdiction is based upon federal question jurisdiction pursuant to Title 28, United States Code, Section 1331.

16. Jurisdiction is based upon federal question jurisdiction pursuant to Title 28, United States Code, Section 1331(a).

17. Jurisdiction is based upon federal question jurisdiction pursuant to Title 42, United States Code, Section 1983.

18. Jurisdiction is based upon federal question jurisdiction pursuant to the Section 1 of the 14th Amendment of the United States Constitution.

19. Jurisdiction is pursuant to the provisions of Title 28, United States Code, Section 1441(b).

20. This is an independent action in equity for relief from the **ORDER** filed on February 23, 2009 in The Superior Court Of Cobb County Georgia in Civil Action File No: 08-1-10450-49.

**VENUE**

21. Venue is proper pursuant to Title 28, United States Code, Section 90 (a)(2).

22. Venue is proper pursuant to Title 28, United States Code, Section 1441(a).

23. The action is pending in The Superior Court of Cobb County Georgia.

24. The United States District Court for the Northern District of Georgia Atlanta Division is the Federal Court District where the State Court Action is pending.

25. The United States District Court for the Northern District of Georgia Atlanta Division is the Federal Court Division where the State Court Action is pending.

26. All adverse parties were provided written notice of the filing of this Notice of Removal, pursuant to Title 28, United States Code, Section 1446 (d).

27. A copy of this notice of Removal was filed in The Superior Court of Cobb County Georgia on March 13, 2009, pursuant to Title 28, United States Code, Section 1446 (d).

**THE GEORGIA CODE OF JUDICIAL CONDUCT**

28. Canon 2 of the Georgia Code of Judicial Code of Conduct states "Judges Shall Avoid Impropriety and the Appearance of Impropriety in All Their Activities."

29. Cannon 2 A of the Georgia Code of Judicial Code of Conduct states "Judges shall respect and comply with the law* and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

30. Cannon 3 B (8) of the Georgia Code of Judicial Code of Conduct states "Judges shall dispose of all judicial matters fairly, promptly, and efficiently."

31. The **MOTION FOR NEW TRIAL** filed on

January 4, 2008, by the Defendant in Civil Action File No. 06-1-10115-49 was ignored.

32. The **MOTION FOR NEW TRIAL** filed on December 31, 2007, by the Defendant in Civil Action File No. 07-1-09310-49 was ignored.

33. The NOTICE OF APPEAL, filed on January 7, 2008, by the Defendant in Civil Action File No. 07-1-09310-49 was ignored.

34. Canon 3 D (2) of the Georgia Code of Judicial Code of Conduct states "Judges who receive information indicating a substantial likelihood that a lawyer has committed a violation of the Standards of Conduct of the State Bar of Georgia should take appropriate action."

35. Canon 3 E. (1) of the Georgia Code of Judicial Code of Conduct states "Judges shall disqualify themselves in any proceeding in which their impartiality might reasonably be questioned"

36. The Honorable Judge Kell refused to recuse himself after he was named the Lead Defendant in the **COMPLAINT FOR DECLARATORY JUDGEMENT AND OTHER RELIEF AND AN INDEPENDENT ACTION IN EQUITY** in Case No. 1 08-CV-1433-TWT filed on April 16, 2008 IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION by the Defendant.

37. Attorney Melvin Drukman did not deny any Allegation in the **COMPLAINT FOR DECLARATORY JUDGEMENT AND OTHER RELIEF AND AN INDEPENDENT ACTION IN EQUITY** in Case No. 1 08-CV-1433-TWT filed on April 16, 2008 IN THE UNITED STATES

DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION by the Defendant.

38. The Honorable Judge Kell did not deny any Allegation in the **COMPLAINT FOR DECLARATORY JUDGEMENT AND OTHER RELIEF AND AN INDEPENDENT ACTION IN EQUITY** in Case No. 1 08-CV-1433-TWT filed on April 16, 2008 in THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION by the Defendant.

Respectfully Submitted,
Dated: March 13, 2009

/S/_____
Jason F. McGee, Pro Se

## APPENDIX Z

U.S. Department of Justice
Civil Rights Division

MJK:sdh:rs
DJ 144-19-0

Criminal Section - PHB
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Mr. Jason F. McGee
290 Christopher Drive
Hiram, GA 30141

Dear Mr. McGee:

This is in response to your letter post marked August 8, 2009, in which you allege that Superior Court Judge Carlton Kell erred when he issued rulings that favored the opposing party or parties during your recent civil proceedings.

The Criminal Section of the Civil Rights Division is responsible for enforcing federal criminal civil rights statutes. Much of our enforcement activity relates to the investigation and prosecution of deprivations of civil rights under color of law. These matters generally involve allegations of excessive physical force or sexual abuse by law enforcement officers.

We have carefully reviewed the information which you furnished. However, we have determined that your complaint does not involve a prosecutable violation of federal criminal civil rights statutes. Accordingly, we are unable to assist you.

You may wish to contact the nearest legal aid program or the local bar association to determine whether they may be able to assist you.

Sincerely,
Mark J. Kappelhoff
Section Chief
Criminal Section
Civil Rights Division

By: /S/_____
Steven Harrell
Paralegal Specialist
Criminal Section

## APPENDIX 1

Case No. 08-17063-E

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE ELEVENTH CIRCUIT**

JASON F. MCGEE,
Plaintiff-Appellant,
v.
THE HONORABLE CARLTON L. KELL
SUPERIOR COURT JUDGE,
COBB COUNTY GEORGIA
and
MELVIN DRUKMAN,
Defendants-Appellees.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION**

CASE NO. 08-17063-E

**PETITION FOR REHEARING EN BANC**

Jason F. McGee, Pro Se

Case No. 08-17063-E

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE ELEVENTH CIRCUIT**

---

JASON F. MCGEE,
Plaintiff-Appellant,
v.
THE HONORABLE CARLTON L. KELL
SUPERIOR COURT JUDGE,
COBB COUNTY GEORGIA
and
MELVIN DRUKMAN,
Defendants-Appellees.

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**ON APPEAL FROM THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF GEORGIA**
**ATLANTA DIVISION**

Case No. 08-17063-E

---

**PETITION FOR REHEARING EN BANC**

---

Jason F. McGee, Pro Se

## CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Jason McGee pursuant to Federal Rules of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1, hereby certify that the following entities and persons have an interest in the outcome of this appeal:

Attorney General Thurbert E. Baker
Honorable Judge Joan Bloom
Honorable Judge James G. Bodiford
Attorney Carin Burgess
Deputy Attorney General Dennis R. Dunn
Honorable Judge Robert E. Flournoy, III
State Bar of Georgia
Honorable Judge Adele Grubbs
Chief Judge S. Lark Ingram
Honorable Judge George H. Kreeger
Debbie McGee
Honorable Judge Kenneth O. Nix
Senior Assistant Attorney General Stefan Ritter
Honorable Judge Dorothy Robinson
Honorable Judge J. Stephen Schuster
Honorable Judge Mary E. Staley

Respectfully Submitted,

/S/_____

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**STATEMENT REQUIRED BY FRAP 35 (b) (1)**

Rehearing en banc is warranted because this case involves a question of exceptional importance: Does the Federal Rooker-Feldman Doctrine override (State Law) Preclusion in a Non FINAL State Domestic Relations Case?

The PER CURIAM Panel's OPINION supporting the District Court's allegation that it "lacks subject matter jurisdiction to review and reverse state court orders and judgments" conflicts with both Federal Law and Precedent. Bonner v. Circuit Court of St. Louis, 526 F.2d 1331, 1334 (8th Cir. 1975) (quoting Bramlet v. Wilson, 495 F.2d 714, 716 (8th Cir.

1974)). Haines v. Kerner, 404 U.S. 519, 520-21, 92 S. Ct. 594, 596, 30 L. Ed. 2d 652 (1972), and take them as true for purposes of deciding whether they state a claim. Cruz v. Beto, 405 U.S. 319, 322, 92 S. Ct. 1079, 1081, 31 L. Ed. 2d 263 (1972).

The Supreme Court's jurisdiction to review state court judgments under 28 U.S.C. § 1257 extends only to final judgments rendered by highest court of a state in which a decision could be had. Hammerstein v Superior Court (1951) 341 US 491, 95 L Ed 1135, 71 S Ct 820, reh den (1951) 342 US 843, 96 L Ed 637, 72 S Ct 21.

The purpose of the final judgment rule of § 1257 is to prevent the Supreme Court from considering a case that has not reached final judgment. It applies "vertically" within a single case's progress up through the appellate hierarchy. By contrast, the purpose of res judicata (and its federal statutory codification, 28 U.S.C. § 1738) is to prevent federal and sister state trial courts from hearing a case that has reached final judgment. It applies "horizontally" to parallel litigation or collateral attacks. Moreover, whether a state court judgment is final for purposes of § 1257 is a question of federal law, Gotthilf v. Sills, 375 U.S. 79, 80, 84 S.Ct. 187, 11 L.Ed.2d 159 (1963) (per curiam), but whether it is final for purposes of preclusion is a question of state law, Roy v. City of Augusta, 712 F.2d 1517, 1520 (1st Cir.1983).

A Writ of Certiorari will be dismissed on ground that a judgment was not rendered by highest court of state in which decision could be had. Dresner v Tallahassee (1964) 378 US 539, 12 L Ed 2d 1018, 84

S Ct 1895, reh den (1964) 379 US 871, 13 L Ed 2d 76, 85 S Ct 13.

After a MOTION FOR NEW TRIAL is filed, the case becomes ripe for appeal when the trial court first denies that motion. Holiday v. State, 258 Ga. 393, 394 (2) (369 SE2d 241) (1988).

Mr. McGee is free to schedule a Hearing for the MOTION FOR NEW TRIAL for CIVIL ACTION FILE 06-1-10115-49 and/or CIVIL ACTION FILE NO: 07-1-09310-49, filed in the Superior Court of Cobb County Georgia, at any time, unless the Court were to issue a ruling SUA SPONTE. O.C.G.A. § 15-6-21 (b) (c) (d). See Uniform Superior Court Rule 6.3.

Mr. McGee also has the option of filing a PETITITON FOR MANDAMUS due to the Court's failure to comply with the provisions of O.C.G.A. § 15-6-21 (b) (c) (d). Jackson County v. Earth Resources, Inc., 280 Ga. 389, 390 (627 SE2d 569) (2006).

## STATEMENT OF ISSUES

Preclusion does not allow the Rooker-Feldman Doctrine to deny Subject Matter Jurisdiction.

Other "alleged" Federal Questions were not addressed in the PER CURIAM Panel's OPINION.

The Allegations in the PER CURIAM Panel's OPINION are Misleading and Prejudicial to Mr. McGee.

The PER CURIAM Panel's failure to address an Incorrect Allegation by the District Court gives the impression that Rule 11 (b) (4) of the Federal Rules of Civil Procedure only applies to the parties of an

Action and not the District Courts. Doc. 11 (Part 2) – Pg. 11-12. Doc. 14 – Pg. 1. Doc. 16 – Pg. 1-2.

## COURSE OF PROCEEDINGS AND CASE DISPOSITION

Mr. McGee sought relief in the District Court to ensure that his rights of equal protection under the law pursuant to Section 1 of the 14th Amendment of the United States Constitution would not be denied. Doc. 1 (Part 1) – Pg. 3. Doc. 5 – Pg. 1-3.

Mr. McGee filed a COMPLAINT FOR DECLARATORY JUDGEMENT AND OTHER RELIEF AND AN INDEPENDENT ACTION IN EQUITY. Doc. 1 (Part 1) – Pg. 1-18.

Mr. Drukman filed a NOTICE OF LIMITED APPEARANCE, alleging that the District Court did not have jurisdiction over him. Doc. 4 – Pg. 1.

Mr. McGee filed a MOTION FOR RELIEF UNDER 28 U.S.C. § 1343 (a) (3) (1993). Doc. 5 – Pg. 1-3.

A MOTION TO DISMISS ON BEHALF OF JUDGE CARLTON L. KELL was filed. Doc. 7 (Part 1) – Pg. 1-2.

Mr. McGee filed the PLAINTIFF'S RESPONSE TO MOTION TO DISMISS ON BEHALF OF JUDGE CARLTON L. KELL. Doc. 8 – Pg. 1-4.

Mr. McGee filed a Return of Service regarding Mr. Drukman. Doc. 10 – Pg. 1.

Mr. McGee filed PLAINTIFF'S 2nd REQUEST FOR MANDATORY JUDICIAL NOTICE. Doc. 11(Part 1) – Pg. 1-5. Doc. 11 (Part 2) – Pg. 1-8.

The District Court issued an ORDER granting

the MOTION TO DISMISS ON BEHALF OF JUDGE CARLTON L. KELL. Doc. 12 – Pg. 1.

Mr. McGee filed a MOTION FOR NEW TRIAL. Doc. 13 – Pg. 1-4.

The District Court issued an ORDER denying PLAINTIFF'S 2nd REQUEST FOR MANDATORY JUDICIAL NOTICE alleging that Mr. McGee failed to include a Certificate of Service. Doc. 14 – Pg. 1.

Mr. McGee filed a MOTION TO RECONSIDER ORDER. Doc. 16 – Pg. 1-2.

In his MOTION TO RECONSIDER ORDER, Mr. McGee made it clear that he included a Certificate of Service. Doc. 16 – Pg. 1-2.

Mr. Drukman filed an APPLICATION FOR ATTACHMENT FOR CONTEMPT IN THE SUPERIOR COURT OF COBB COUNTY GEORGIA. Doc. 17 (Part 2) – Pg. 1. Doc. 18 (Part 2) – Pg. 4-6.

Mr. McGee filed a MOTION FOR TEMPORARY INJUNCTION. Doc. 18 (Part 1) – Pg. 1-2.

The District Court issued an ORDER denying Mr. McGee's MOTION TO RECONSIDER ORDER. Doc. 19 – Pg. 1.

Mr. McGee filed a NOTICE OF APPEAL. Doc. 20 – Pg. 1.

Mr. McGee's Appeal was denied by the PER CURIAM Panel's OPINION issued on June 8, 2009.

## MISLEADING AND PREJUDICIAL ALLEGATIONS

Based upon my knowledge of the Facts and the Law, it is clear to me that a decision was made to deny the Appeal and then an OPINION was written

to justify the denial.

**FACTS**

There were 4 ORDERs listed in the COMPLAINT FOR DECLARATORY JUDGEMENT AND OTHER RELIEF AND AN INDEPENDENT ACTION IN EQUITY in 2 separate cases:

CIVIL ACTION FILE NO: 06-1-10115-49 is a PETITION FOR CHANGE OF CUSTODY AND CHILD SUPPORT that is OPEN.

CIVIL ACTION FILE NO: 07-1-09310-49 is a PETITION FOR CITATION OF CONTEMPT that is also OPEN.

**ordered McGee to pay the unpaid support and to make payments necessary to clear title on certain real property**

The PER CURIAM Panel's OPINION does not address the following:

1. A Georgia Trial Court cannot issue a Lawful ORDER for Contempt and Custody in the same case. O.C.G.A. § 19-9-23 (a) (b) (c) (1) (2). McCall v. McCall, 2000, 246 Ga.App. 770, 542 S.E.2d 168.
2. The reinstated ORDER for child support is not in compliance with O.C.G.A 19-6-15 (b) (c). Pruitt v. Lindsey, 261 Ga. 540 (407 SE2d 750) (1991). Riggs v. Darsey, 260 Ga. 487 (396 SE2d 905) (1990). See also Willingham v. Willingham, 261 Ga. 674 (410 SE2d 98) (1991). Wingard v. Paris, 270 Ga. 439, 440 (511 SE2d 167) (1999).
3. The ORDER regarding the "alleged" **unpaid support** is an attempt to hold Mr. McGee in

Contempt of a previous Illegal ORDER.

4. The Trial Court had no Authority, much less Jurisdiction, to issue the ORDER regarding the **payments necessary to clear title on certain real property** due to a NOTICE OF APPEAL filed in the Superior Court of Cobb County Georgia.

"**invalid because they were based upon unsworn statements**"

Where the statements are in the self-interest of the declarant, a court has clear reason to find them insufficiently reliable to meet the necessity of hearsay rule. O.C.G.A. § 24-3-1(b). Dodd v. Scott, 2001, 250 Ga.App. 32, 550 S.E.2d 444.

No valid judgment could have been rendered on unsworn statements. O.C.G.A. § 24-9- 60. Grantham v. Grantham, 1996, 224 Ga.App. 1, 479 S.E.2d 370 reconsideration denied.

"**did not properly set forth the court's findings of fact and conclusions of law.**"

The Court of Appeals of the State of Georgia verified the requirement that written Findings of Fact and Conclusions of Law applies to contested child custody cases under subsection (a) of O.C.G.A. § 9-11-52. Jordan v Jordan, 179 Ga. App. 155, 345 S.E.2d 675 (1986). Couch v. Couch, 177 Ga. App. 773, 341 S.E.2d 303 (1986). Avery v. Avery, 234 Ga. 729, 218 S.E.2d 19 (1975); Motes v. Stanton, 237 Ga. 440, 228 S.E.2d 831 (1976); Coleman v. Coleman, 238 Ga. 183, 232 S.E.2d 57 (1977) (see O.C.G.A. § 9-11-52).

**McGee was a "state-court loser" in his divorce proceeding and child custody dispute**

Mr. McGee did not ask the District Court to overturn his Divorce proceeding.

Mr. McGee's Divorce proceeding, CIVIL ACTION FILE NO: 05-1-05011, was closed until it was re-opened after Attorney Melvin Drukman filed a RULE NISI containing the Lie that he filed a "Motion to Resume Custody and Child Support".

The PER CURIAM Panel's OPINION gives no explanation to justify the allegation that Mr. McGee lost a child custody dispute that is still pending in the Superior Court of Cobb County Georgia.

**the allegedly improper state court contempt orders entered by Judge Kell.**

The ORDER, filed on January 2, 2008, in CIVIL ACTION FILE NO: 07-1-09310-49 is based upon Unsworn Statements.

The ORDER, filed on January 2, 2008, in CIVIL ACTION FILE NO: 07-1-09310-49 does not contain Findings of Fact and Conclusions of Law as required by Georgia Law.

The ORDER, filed on February 4, 2008, in CIVIL ACTION FILE NO: 06-1-10115-49 was issued while an Appeal was pending in the Court of Appeals of the State of Georgia.

The ORDER, filed on February 4, 2008, in CIVIL ACTION FILE NO: 07-1-09310-49 was issued while an Appeal was pending in the Court of Appeals of the State of Georgia.

## ARGUMENT

### SUBJECT MATTER JURISDICTION

The District Court misapplied Federal Law in alleging that it "lacks subject matter jurisdiction to review and reverse state court orders and judgments". United States v. McPhee, 336 F.3d 1269, 1271 (11th Cir. 2003). The keyword missing is FINAL. Crawford & Co. v. Apfel, 235 F.3d 1298, 1302 (11th Cir. 2000) (quoting Huie v. Bowen, 788 F.2d 698, 701 (11th Cir. 1986)). If any of the 4 ORDERs were FINAL Judgments, the Rooker-Feldman Doctrine might apply to the extent there were no other parallel Federal issues pending. Exxon Mobil, 544 U.S. at 286-87 (quoting Feldman, 460 U.S. at 487). See Exxon Mobil, 544 U. S., at 292 ( Rooker-Feldman does not apply to parallel state and federal litigation).

Dismissal of the complaint upon the ground of lack of jurisdiction of the subject matter would, therefore, be justified only if that claim were "so attenuated and unsubstantial as to be absolutely devoid of merit," Newburyport Water Co. v. Newburyport, 193 U.S. 561, 579, or "frivolous," Bell v. Hood, 327 U.S. 678, 683. Baker v. Carr, 369 U.S. 186, 199 (1962). Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955, 1974 (2007). Lawrence v. Dunbar, 919 F.2d 1525, 1528-29 (11th Cir. 1990) (quotation and alteration omitted). See Conley v. Gibson, 355 U.S. 41, 45 – 46 (1957).

**DOUBLE STANDARD (ROOKER-FELDMAN vs PRECLUSION)**

Preclusion is a two way street. This Court must respect the Laws of the State of Georgia while also ensuring that Mr. McGee's Constitutional Rights are protected by Federal Law. 28 U.S.C.A. § 1738. By failing to apply State Law Preclusion to the 4 ORDERs, the Federal Court(s) are implying:

1. A State Trial Court's ORDER can override an OPINION of a State's Appellate Court(s) in Domestic Relations cases.

2. A State Trial Court is free to deprive Mr. McGee of his Constitutional Rights in a Domestic Relations case under the color of State Law.

**FINDINGS OF FACT OF CONCLUSIONS OF LAW**

Why would Mr. McGee not ask for Findings of Fact and Conclusions of Law when he knew the Court issued ORDERs based on Lies told in Open Court by Mr. Drukman? Thomas v. Scott, 1996 221 Ga. 875, 148 S.E.2d 300. Jimmy Ledford v. Shelby Peeples, Jr., No. 06-10715, D. C. Docket No. 04-00005-CV-HLM-4, 101 (2009).

**EN BANC REQUEST**

The District Court's ORDER nor the PER CURIAM Panel's OPINION addressed any of the following:

1. Neither Defendant challenged the Truthfulness of the pleadings filed by Mr. McGee.

2. The Honorable Judge Kell deprived Mr. McGee

of his Constitutional Rights by issuing 4 ORDERs that are contrary to the Laws of the State of Georgia.

3. The Record shows that Mr. Drukman benefitted from Fraudulent verbal and written pleadings made in the Superior Court of Cobb County Georgia.

4. The Attorney General of Georgia asked the District Court to dismiss a pending case in a Federal District Court where:

1. The Honorable Judge Kell ignored the Laws of the State of Georgia in a pending State Court case.

2. The Honorable Judge Kell ignored the OPINIONs of Georgia Appellate Courts in a pending State Court case.

## CONCLUSION

On the seal, the eagle, standing in a protective attitude, symbolizes Federal Authority and denotes protection which the law provides equally to all citizens; the book signifies the law of the land and the scales allude to Justice; the stars refer to the three States of the Circuit; blue is symbolic of wisdom, guidance and liberty, while white symbolizes truth, hope and purity.

The words above are from the Motto of the 11th Circuit Court of Appeals.

The Truth cannot be an incidental benefit of the Law, it must be the Foundation of Justice.

I respectfully ask this Court to speak with one voice to ensure that the United States Constitution is the Law of the Land by ensuring that equal

protection of the Laws applies in both Federal and State Courts.

Mr. McGee requests that the PER CURIAM Panel's OPINION be reheard En Banc because it conflicts with the Laws of the United States, binding Precedent of the United States Supreme Court, Precedent of this Court and the Laws of the State of Georgia.

Respectfully Submitted,
Dated: June 25, 2009

/S/_____

## APPENDIX 2

Case No. 08-17063-E

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE ELEVENTH CIRCUIT**

JASON F. MCGEE,
Plaintiff-Appellant,
v.
THE HONORABLE CARLTON L. KELL
SUPERIOR COURT JUDGE,
COBB COUNTY GEORGIA
and
MELVIN DRUKMAN,
Defendants-Appellees.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF GEORGIA**
**ATLANTA DIVISION**

CASE NO. 08-17063-E

**APPELLANT'S OPENING BRIEF**

Jason F. McGee, Pro Se

NO ORAL ARGUMENT REQUESTED

Case No. 08-17063-E

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE ELEVENTH CIRCUIT**

---

JASON F. MCGEE,
Plaintiff-Appellant,
v.
THE HONORABLE CARLTON L. KELL
SUPERIOR COURT JUDGE,
COBB COUNTY GEORGIA
and
MELVIN DRUKMAN,
Defendants-Appellees.

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**ON APPEAL FROM THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF GEORGIA**
**ATLANTA DIVISION**

Case No. 08-17063-E

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# APPELLANT'S OPENING BRIEF

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Jason F. McGee, Pro Se

## CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Jason McGee pursuant to Federal Rules of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1, hereby certify that the following entities and persons have an interest in the outcome of this appeal:

Attorney General Thurbert E. Baker
Honorable Judge Joan Bloom
Honorable Judge James G. Bodiford
Attorney Carin Burgess
Deputy Attorney General Dennis R. Dunn
Honorable Judge Robert E. Flournoy, III
State Bar of Georgia
Honorable Judge Adele Grubbs
Chief Judge S. Lark Ingram
Honorable Judge George H. Kreeger
Debbie McGee
Honorable Judge Kenneth O. Nix
Senior Assistant Attorney General Stefan Ritter
Honorable Judge Dorothy Robinson
Honorable Judge J. Stephen Schuster
Honorable Judge Mary E. Staley

Respectfully Submitted,

/S/_____
Jason F. McGee, Pro Se

## STATEMENT REGARDING ORAL ARGUMENT

Jason F. McGee, pursuant to Federal Rules of Appellate Procedure 34 (a) and Eleventh Circuit Rule 34-3, does not request an Oral Argument.

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## STATEMENT OF JURISDICTION

The District Court has Subject Matter Jurisdiction over this action under Title 28, United States Code, Section 1331. The District Court has jurisdiction based upon Federal Question Jurisdiction pursuant to Title 28, United States Code, Section 1331 (a). The District Court has jurisdiction based upon Federal Question Jurisdiction pursuant to Section 1 of the 14th Amendment of the United States Constitution.

This Court has Appellate Jurisdiction pursuant to Title 28, United States Code, Section 1291.

Mr. McGee filed a timely **NOTICE OF APPEAL** pursuant to Federal Rules of Appellate Procedure 3 and 4 on December 15, 2008. Doc. 20 – Pg. 1.

The District Court issued an **ORDER** granting the **MOTION TO DISMISS ON BEHALF OF JUDGE CARLTON L. KELL** filed on October 21, 2008. Doc. 7 (Part 1) – Pg. 1-2. Doc. 12 – Pg. 1. The District Court entered an **ORDER** on December 10, 2008 denying Mr. McGee's **MOTION TO RECONSIDER ORDER**. Doc. 19 – Pg. 1.

## STATEMENT OF THE ISSUE

Did the District Court error in using Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923) to deny Subject Matter Jurisdiction? Doc. 1 (Part 1) – Pg. 1-18. Doc. 5 – Pg. 1-3. Doc. 12 – Pg. 1. Doc. 19 – Pg. 1.

## STATEMENT OF THE CASE

Mr. McGee sought relief in the District Court to ensure that his rights of equal protection under the law pursuant to Section 1 of the 14th Amendment of the United States Constitution would not be denied. Doc. 1 (Part 1) – Pg. 3. Doc. 5 – Pg. 1-3.

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The District Court issued an ORDER denying Mr. McGee's MOTION TO RECONSIDER ORDER. Doc. 19 – Pg. 1.

Mr. McGee filed a NOTICE OF APPEAL. Doc. 20 – Pg. 1.

## STATEMENT OF THE FACTS

A RULE NISI was filed in Mr. McGee's Divorce case (Civil Action File No. 05-1-5011). Doc. 6 (Part 2) – Pg. 67. Doc. 11 (Part 2) – Pg. 5, 6, 15. Hammontree v. Hammontree, 1988, 186 Ga. App. 819, 368 S.E.2d 576. McCall v. McCall, 2000, 246 Ga. App. 770, 542 S.E.2d 168. Wilson v. Baldwin, 1999, 239 Ga. App. 327, 519 S.E.2d 251, reconsideration denied, certiorari denied. O.C.G.A. § 19-9-23 (a), (c) (1, 2). Uniform Superior Court Rule 24.2.

The "Motion to Resume Custody and Child Support" alleged in the RULE NISI was never filed by Mr. Drukman. Doc. 6 (Part 2) – Pg. 2-3. Doc. 11 (Part 2) – Pg. 15.

Attorney Carin Burgess filed a MOTION TO VACATE AND SET ASIDE JUDGMENT on behalf of Mr. McGee. Doc. 1 (Part 1) – Pg. 5. Doc. 6 (Part 2) – Pg. 1-12. Richardson v. Simmons, 245 Ga. App. 749, 750 (538 SE2d 830) (2000). O.C.G.A. § 9-11-60 (d) (2).

Mr. Drukman did not file any pleading to oppose the MOTION TO VACATE AND SET ASIDE JUDGMENT within 30 days as required by Georgia Law. Doc. 1 (Part 1) – Pg. 4-6. Doc. 6 (Part 2) – Pg. 13-15. Rudd v. Paden, 2006, 279 Ga. App. 141, 630 S.E.2d 648. Uniform Superior Court Rule 6.2.

Mr. McGee questioned the Truthfulness of statements made by Mr. Drukman. Doc. 1 (Part 1) – Pg. 6-7. Doc. 6 (Part 2) – Pg. 16, 28, 41, 43-44, 61. Doc. 11 (Part 1) – Pg. 3. Doc. 11 (Part 2) – Pg. 2, 7. Doc. 17 (Part 2) – Pg. 1.

A written ORDER was not issued for the MOTION TO VACATE AND SET ASIDE JUDGMENT until it was denied by The Honorable Judge Kell on January 2, 2008. Doc. 1 (Part 1) – Pg. 2. Doc. 6 (Part 2) – Pg. 35-36. O.C.G.A. § 15-6-21 (b). Uniform Superior Court Rule 6.3.

The Honorable Judge Kell granted the MOTION FOR CONTEMPT. Doc. 1 (Part 1) – Pg. 2. Doc. 6 (Part 2) – Pg. 54-55. Dodd v. Scott, 2001, 250 Ga. App. 32, 550 S.E.2d 444. Grantham v. Grantham, 1996, 224 Ga. App. 1, 479 S.E.2d 370 reconsideration denied. O.C.G.A. § 24-9-60.

Mr. McGee filed a MOTION FOR NEW TRIAL on both cases. Doc. 1 (Part 1) – Pg. 12. Doc. 6 (Part 2) – Pg. 21, 57. O.C.G.A. § 9-11-62 (b).

Mr. McGee filed a NOTICE OF APPEAL. Doc. 1 (Part 1) – Pg. 12. Doc. 6 (Part 2) – Pg. 58. O.C.G.A. § 5-6-37.

Instead of granting Mr. McGee supersedeas, The Honorable Judge Kell used his own Authority to enforce his Contempt ORDER. Doc. 1 (Part 1) – Pg. 12-13. Doc. 6 (Part 2) – Pg. 66, 68-69, 71. Doc. 11 (Part 2) - Pg. 6-7, 20-21. See Calver Enters., v. Griffin-Spalding County Hosp. Auth., 197 Ga. App. 727, 728-29, 399 S.E.2d 287, 288 (1990); see also Brinkley v. Flatt, 256 Ga. App. 263, 265, 568 S.E.2d 95, 98 (2002). Walker, 239 Ga. at 175-176, 236 S.E.2d at 265. Park, 229 Ga. at 769-70, 194 S.E.2d at 468. Cherry, 257 Ga. at 404, 359 S.E.2d at 906. O.C.G.A. § 5-6-13 (a).

Mr. McGee moved the District Court to issue an ORDER declaring the ORDER filed on January 2, 2008 in CIVIL ACTION FILE NO: 06-1-10115-49 is void. Doc. 1 (Part 2) – Pg. 16. Doc. 6 (Part 2) – Pg. 18, 19. Dodd v. Scott, 2001, 250 Ga. App. 32, 550 S.E.2d 444. Grantham v. Grantham, 1996, 224 Ga. App. 1, 479 S.E.2d 370 reconsideration denied. O.C.G.A. § 24-3-1 (b). O.C.G.A. § 24-9-60.

Mr. McGee moved the District Court to issue an ORDER declaring the ORDER filed on January 2, 2008 in CIVIL ACTION FILE NO: 07-1-09310-49 is void. Doc. 1 (Part 2) – Pg. 16. Doc. 6 (Part 2) – Pg. 54, 55. Dodd v. Scott, 2001, 250 Ga. App. 32, 550 S.E.2d 444. Grantham v. Grantham, 1996, 224 Ga. App. 1, 479 S.E.2d 370 reconsideration denied.

O.C.G.A. § 24-3-1 (b). O.C.G.A. § 24-9-60.

Mr. McGee moved the District Court to issue an ORDER declaring the ORDER filed on February 4, 2008 in CIVIL ACTION FILE NO: 06-1-10115-49 is void. Doc. 1 (Part 2) – Pg. 16. Doc. 6 (Part 2) – Pg. 68, 69. Walker, 239 Ga. at 175-176, 236 S.E.2d at 265; Park, 229 Ga. at 769-70, 194 S.E.2d at 468.

Mr. McGee moved the District Court to issue an ORDER declaring the ORDER filed on February 4, 2008 in CIVIL ACTION FILE NO: 07-1-09310-49 is void. Doc. 1 (Part 2) – Pg. 16. Doc. 6 (Part 2) – Pg. 68, 69. Walker, 239 Ga. at 175-176, 236 S.E.2d at 265; Park, 229 Ga. at 769-70, 194 S.E.2d at 468.

The District Court did not rule on Mr. McGee's MOTION FOR RELIEF UNDER 28 U.S.C. § 1343 (a) (3) (1993). Doc. 5 – Pg. 1-3.

It is clear to Mr. McGee that the PLAINTIFF'S 2nd REQUEST FOR MANDATORY JUDICIAL NOTICE was denied because of the FACTS it contained. Doc. 11 (Part 2) – Pg. 1-8, 13-18, 20-28.

The allegation by the District Court that it does not have Subject Matter Jurisdiction violates Binding Precedent (stare decisis). Doc. 12 – Pg. 1. Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284-86, 125 S. Ct. 1517, 1522-23, 161 L. Ed. 2d 454 (2005).

The allegation by the District Court that it does not have Subject Matter Jurisdiction violates Mr. McGee's right to Due Process. Doc. 8 – Pg. 2-3. Doc. 12 – Pg. 1. Doc. 15 – Pg. 1-2.

## SUMMARY OF THE ARGUMENT

The District Court cited the wrong Law as justification that it does not have Subject Matter Jurisdiction. Not only does the District Court have Subject Matter Jurisdiction under Rooker v. Fidelity Trust Co., it has Subject Matter Jurisdiction under Exxon Mobil Corp. v. Saudi Basic Indus. Corp.

The District Court offered an unsupported conclusion that this a "pro se civil action to overturn contempt Orders of a Cobb County Superior Court Judge."

Under Preclusion, the District Court cannot give Full Faith and Credit to an ORDER by a State Court Judge that Conflicts with the Laws of a State, Conflicts with rulings of Courts of Higher Precedence and Violates a party's Constitutional Rights of Equal Protection Under Law.

If the Law is not fairly applied to each and every party appearing in a Court of Law - Justice, Equal Protection Under The Law and Due Process is a mere Illusion. The price of Justice must not be Attorney Fees.

## STANDARD OF REVIEW

A dismissal based on Subject Matter Jurisdiction is a ruling on a question of law and is reviewed de novo. Brooks v. Ashcroft, 283 F.3d 1268, 1272 (11th Cir. 2002). Goodman ex rel. Goodman v. Sipos, 259 F.3d 1327, 1331 (11th Cir. 2001). United States v. McPhee, 336 F.3d 1269, 1271 (11th Cir. 2003).

## ARGUMENT

**ROOKER V. FIDELITY TRUST CO.**

The District Court's use of Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923) to deny Subject Matter Jurisdiction is wrong for several reasons but the main 2 are:

A. The District Court used the wrong Law.
   1. The correct Law would be Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284-86, 125 S. Ct. 1517, 1522-23, 161 L. Ed. 2d 454 (2005). Doc. 9 – Pg. 4-6.

   2. Even if Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923) were the correct Law, Mr. McGee did not ask the District Court to overturn a FINAL State Court Judgment. Doc. 1 (Part 1) – Pg. 16. Doc. 18 (Part 2) – Pg. 1, 2.

The allegation by the District Court that it cannot overturn a State Court Judgment is correct under both Rooker and Exxon Mobil in the appropriate circumstances. Doc. 9 – Pg. 4-7. Doc. 12 – Pg. 1. Doc. 19 – Pg. 1. Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923). Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284-86, 125 S. Ct. 1517, 1522-23, 161 L. Ed. 2d 454 (2005).

B. It gives the impression that Pro Se pleadings are not welcome in the District Court.
   1. Pro Se means a party who is not a Licensed Attorney authorized to practice in any

court under the Jurisdiction of the District Court.

None of the allegations in the COMPLAINT FOR DECLARATORY JUDGEMENT AND OTHER RELIEF AND AN INDEPENDENT ACTION IN EQUITY were denied by either of the Defendants. Doc. 4 – Pg. 1. Doc. 7 (Part 1) – Pg. 1, 2. Doc. 7 (Part 2) – Pg. 1-8. Yet, the District Court ignored violations of Georgia Law throughout the Record and then alleged that it did not have Subject Matter Jurisdiction. Doc. 1 (Part 1) – Pg. 7, 9-10, 12-15. Doc. 9 – Pg. 2-4, 7-10. Doc. 11 (Part 1) – Pg. 3. Doc. 12 – Pg. 1.

**UNSUPPORTED CONCLUSION VIOLATES PRECLUSION AND FULL FAITH AND CREDIT ACT**

The District Court's unsupported conclusion that this a "pro se civil action to overturn contempt Orders of a Cobb County Superior Court Judge." fails Preclusion under the Full Faith and Credit Clause. Doc. 12 – Pg. 1. Doc. 19 -- Pg. 1. Kremer v. Chemical Constr. Corp., 456 U.S. 461, 466 (1982). Davis v. Bayless, 70 F.3d 367, 376, (5th Cir. 1995). 28 U.S.C.A. § 1738.

Preclusion nor the Full Faith and Credit Act allow a District Court to recognize an ORDER of a State Court Judge that:

A. Conflicts with the Laws of a State. Doc. 1 (Part 1) – Pg. 4-5, 10-11, 13-14. Doc. 9 – Pg. 9.
B. Conflicts with rulings of Courts of Higher Precedence. Doc. 1 (Part 1) – Pg. 5-6, 8-14.
C. Violates a party's Constitutional Rights of

Equal Protection Under Law. Doc. 1 (Part 1) – Pg. 4, 7, 9-10, 12, 14-15. Doc. 15 – Pg. 1-2, 4-5.

Unless the Law is fairly applied to each and every party appearing in a Court of Law:

A. Justice, Equal Protection Under The Law and Due Process is a mere Illusion.
B. The price of Justice may be Attorney Fees. Doc. 15 – Pg. 1

## CONCLUSION

Because the District Court erred in using Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923) to deny Subject Matter Jurisdiction, the ORDER dismissing Mr. McGee's COMPLAINT FOR DECLARATORY JUDGEMENT AND OTHER RELIEF AND AN INDEPENDENT ACTION IN EQUITY should be reversed and the case remanded. Doc. 1 (Part 1) – Pg. 1-18. Doc. 12 – Pg. 1.

Mr. McGee filed the "Certificate of Service" that the District Court alleged that he did not. Doc. 11 (Part 2) – Pg. 11-12. Doc. 14 – Pg. 1. Doc. 16 – Pg. 1-2.

The ORDER denying Mr. McGee's MOTION TO RECONSIDER ORDER must be reversed. Doc. 19 – Pg. 1.

Respectfully Submitted,
Dated: January 13, 2009

/S/_____
Jason F. McGee, Pro Se

## APPENDIX 3

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF**
**GEORGIA**
**ATLANTA DIVISION**

No. 08-17063-EE

JASON F. MCGEE,
Plaintiff,
v.

Case No. 1-08-CV-1433-TWT

THE HONORABLE CARLTON L. KELL,
SUPERIOR COURT JUDGE,
COBB COUNTY GEORGIA
and
MELVIN DRUKMAN,
DEFENDANTS.

**COMPLAINT FOR DECLARATORY JUDGEMENT AND OTHER RELIEF AND AN INDEPENDENT ACTION IN EQUITY**

1. This is an action for declaratory relief pursuant to Title 28, United States Code, Section 2201.

2. This is an action for declaratory relief pursuant to Title 28, United States Code, Section 2202.

3. This is an action for injunctive relief, pursuant to Rule 65 of the Federal Rules of Civil Procedure.

4. This is an independent action in equity for relief from the **ORDER** filed on January 2, 2008 in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA** in **CIVIL ACTION FILE NO: 06-1-10115- 49** by The Honorable Carlton L. Kell.

5. This is an independent action in equity for relief from the **ORDER** filed on January 2, 2008 in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA** in **CIVIL ACTION FILE NO: 07-1-09310-49** by The Honorable Carlton L. Kell .

6. This is an independent action in equity for relief from the **ORDER** filed on February 4, 2008 in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA** in **CIVIL ACTION FILE NO: 06- 1 - 101 15-49** by The Honorable Carlton L. Kell.

7. This is an independent action in equity for relief from the **ORDER** filed on February 4, 2008 in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA** in **CIVIL ACTION FILE NO: 07-1-09310-49** by The Honorable Carlton L. Kell.

**JURISDICTION**

8. Jurisdiction of this action is based upon federal question jurisdiction pursuant to Title 28, United States Code, Section 1331.

9. Jurisdiction of this action is based upon federal question jurisdiction pursuant to Title 28, United States Code, Section and 1331(a).

10. Jurisdiction of this action is based upon federal question jurisdiction pursuant to the Section 1 of the 14th Amendment of the United States Constitution.

11. This court has supplemental jurisdiction over

plaintiffs common law claims, infra.

**VENUE**

12. Venue is proper pursuant to Title 28, United States Code, Section 1391.

13. The claims in this action arise out of acts undertaken in Cobb County Georgia, which is in the Atlanta Division of United States District Court for the Northern District of Georgia.

14. The injuries were suffered in Cobb County Georgia, which is in the Atlanta Division of United States District Court for the Northern District of Georgia.

15. Plaintiff is a citizen of the State of Georgia.

16. Plaintiff resides at the following address :

2152 Caneridge Drive
Marietta, GA 30064

17. Defendant, Honorable Judge Carlton L . Kell, is a citizen of the State of Georgia.

18. Defendant, Honorable Judge Carlton L . Kell, has an office at:

SUPERIOR COURT OF COBB COUNTY
30 WADDELL STREET
MARIETTA, GA 30090-9642

19. Defendant, Melvin Drukman, is a citizen of the State of Georgia.

20. Defendant, Melvin Drukman, has an office at .

1756 CENTURY BOULEVARD
SUITE B
ATLANTA, GA 30345

**REASON FOR ACTION**

21. On December 17, 2008, on page 12, in a Trial Transcript prepared by Court Reporter Beverly Bridges on January 25, 2008 **for CIVIL ACTION FILE NO: 06- 1-10115** in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA**, Plaintiff said "The point, I was brought to court based on a motion that was never filed. So basically what I'm alleging is that Mrs McGee and Mr. Drukman committed fraud to get me to court to get a fraudulent court ruling . That's my argument."

**30 DAY FILING DEADLINE AFTER SERVICE OF MOTION**

22. Uniform Superior Court Rule 6 .2 states that Unless otherwise ordered by the judge, each party opposing a motion shall serve and file a response, reply motion, memorandum, affidavits, or other responsive material not later than 30 days after service of the motion.

23. On May 10, 2007, Attorney Carin Burgess filed a **MOTION TO VACATE AND SET ASIDE JUDGMENT** in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA** in **CIVIL ACTION FILE NO: 06-1-10115** on behalf of Plaintiff.

24. On Page 12 of the **MOTION TO VACATE AND SET ASIDE JUDGMENT** filed in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA** in **CIVIL ACTION FILE NO: 06-1-10115**, Attorney Carin Burgess signed a "**CERTIFICATE OF SERVICE**".

25 . The "**CERTIFICATE OF SERVICE** " filed

by Attorney Carin Burgess in the **MOTION TO VACATE AND SET ASIDE JUDGMENT** filed in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA in CIVIL ACTION FILE NO: 06-1-10115**, was dated "This 10th day of May, 2007.".

26. In Rudd v. Paden, 2006, 279 Ga.App. 141, 630 S .E.2d 648, the Court of Appeals of The State of Georgia ruled that a Party who fails to comply with rule requiring party who opposes a motion to file responsive material within 30 days after service of motion waives her right to present evidence in opposition to the motion.

27. In Rudd v. Paden, 2006, 279 Ga.App. 141 , 630 S.E.2d 648, the Court of Appeals of The State of Georgia ruled that Although the presence of the conditional language in rule requiring party to file responsive material within 30 days after service of motion, "unless ordered by the judge," does not give the trial judge discretion regarding the period of time by which a party must respond to a motion, it does not give the court unfettered authority to excuse late filing.

28. On November 16, 2007, Defendant Melvin Drukman filed a **BRIEF IN OPPOSITION TO PETITIONERS MOTION TO VACATE AND SET ASIDE JUDGMENT** in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA** in **CIVIL ACTION FILE NO: 06-1-10115**.

29. On November 26, 2007, Plaintiff filed a **RESPONSE TO BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO VACATE AND SET ASIDE JUDGMENT** in **THE SUPERIOR**

**COURT OF COBB COUNTY GEORGIA** in **CIVIL ACTION FILE NO: 06-1-10115**.

30. Plaintiff alleged in Paragraph 1 of his **RESPONSE TO BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO VACATE AND SET ASIDE JUDGMENT** filed on November 26, 2007 in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA** in **CIVIL ACTION FILE NO: 06-1-10115** that "Once again in Paragraph 5, Mr. Drukman is LYING in attempt to mislead the Court.".

31. Plaintiff alleged in Paragraph 2 of his **RESPONSE TO BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO VACATE AND SET ASIDE JUDGMENT** filed on November 2b, 2007 in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA** in **CIVIL ACTION FILE NO: 06-1-10115** that "An Emergency Motion was never filed by RESPONDENT." .

32 . Plaintiff alleged in Paragraph 3 of his **RESPONSE TO BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO VACATE AND SET ASIDE JUDGMENT** filed on November 26, 2007 in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA** in **CIVIL ACTION FILE NO: 06-1-10115** that "As a Matter of Fact, RESPONDENT never filed any Motion ." .

33. On December 17, 2008, on page 10, in a Trial Transcript prepared by Court Reporter Beverly Bridges on January 25, 2008 for **CIVIL ACTION FILE NO: 06-1-10115** in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA**, Defendant Melvin Drukman said "I waived service

and filed an answer, Your Honor. That issue can be heard . So we can go forward.".

34. Defendant, The Honorable Judge Carlton L . Kell, did not have Authority under the Law to excuse the late filing of Defendant Melvin Drukman in Response to **MOTION TO VACATE AND SET ASIDE JUDGMENT** filed in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA** in **CIVIL ACTION FILE NO: 06-1-10115**.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

35. When disposition of motion in nonjury case requires weighing of evidence and constitutes and adjudication on the merits, findings of fact and conclusions of law are required. **Bob Bennett E nters., Inc. v. Trust Co. Bank, 153 Ga. App. 344, 265 S, E. 2d 311 (1980)**.

36. Where the trial court's order contains no recitation of the facts it found to support it conclusions, the appeal is remanded with direction that the trial judge vacate the judgment, prepare, or cause to be prepared, appropriate findings of fact and conclusions of law, and enter a new judgment thereon, after which the losing party shall be free to enter another appeal if it should wish to do so. **C & H Couriers, Inc. v. American Mut. Ins. Co., 166 Ga. App. 853, 305 S.E. 2d 500 (1983)**.

37 . When an order fails to specify clearly the findings of fact and conclusions of law, or fails to contain any such recitation, the case will be remanded with direction that the prior order be vacated and a new order containing appropriate

findings and conclusions be entered. **C & H Couriers Inc. v. American Mut. Ins. Co., 166 Ga. App. 853, 854, 305 S.E.2d 500, 501 (1983); Fairburn Banking Co. v. Upton, 172 Ga. App. 81, 82, 321 S .E.2d 814, 815 (1984).**

38. The order should state not only the end result of the judge's inquiry, but the process by which it was reached . **See, e.g., In re Interest of D.L.G., 212 Ga. App. 353,442 S.E.2d 11 (1994) ; Moore v. Farmers Bank 182 Ga. App. 94, 95, 354 S. E . 2d 692,693 (1987) ; C & H Couriers Inc. v. American Mut. Ins . Co., 166 Ga. App. 853, 3 05 S.E. 2d 500 (1983) ; Woodruff v. B-X Corp., 154 Ga. App. 197, 197-198, 267 S. E. 2d 757, 758 (1980)**

39. In the **ORDER** filed on January 2, 2008 in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA** in **CIVIL ACTION FILE NO: 06-1-10115-49**, The Honorable Carlton L . Kell did not state findings of fact and conclusions of law.

40. In the **ORDER** filed on January 2, 2008 in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA** in **CIVIL ACTION FILE NO: 07-1-09310-49**, The Honorable Carlton L . Kell did not state findings of fact and conclusions of law.

41. In the **ORDER** filed on February 4, 2008 in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA** in **CIVIL ACTION FILE NO: 06-1-10115-49**, The Honorable Carlton L. Kell did not state findings of fact and conclusions of law.

42. In the **ORDER** filed on February 4, 2008 in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA** in **CIVIL ACTION FILE NO: 07-1-**

09310-49, The Honorable Carlton L. Kell did not state findings of fact and conclusions of law.

43. Principle that findings of trial courts in nonjury trials shall not be set aside unless clearly erroneous does not apply where it appears that trial court's findings and judgment are based on error of law. **O.C.G.A. § 9-11-52(a). Scott v. Purser Truck Sales, Inc., 1991, 198 Ga.App 611, 402 S.E. 2d 354.**

**CHILD SUPPORT GUIDELINES**

44. Subsection (a) of O .C.G.A. § 9-11-52 is mandatory in contested custody of children actions . **Couch v. Couch, 177 Ga. App. 773, 341 S.E.2d 303 (1986).**

45. Requirements of subsection (a) are applicable to contested child custody cases. **Avery v. Avery, 234 Ga. 729, 218 S.E.2d 19 (1975); Motes v. Stanton, 237 Ga. 440, 228 S .E.2d 831 (1976) ; Coleman v. Coleman, 238 Ga. 183, 232 S.E.2d 57 (1977) (see O.C.G.A. § 9-11-52).**

46. **CIVIL ACTION FILE NO: 06-1-10115** is a "**PETITION FOR CHANGE OF CUSTODY AND CHILD SUPPORT**" filed by Plaintiff in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA**.

47. "[C]hild support guidelines apply not only to initial determinations of child support, but also to modification actions, and "` . . . must be considered by any court setting child support ." [ Cit. '" **Wingard v. Paris, 270 Ga. 439, 440 (511 SE2d 167) (1999).**

48. Child support guidelines are mandatory and must be considered by any trier of fact setting amount of child support. **O.C.G.A. § 19-9-1(b, c). Gordy v. Gordy, 2000, 246 Ga .App. 802,542 S.E.2d 536; Franz v. Franz, 1997, 268 GA. 465, 490 S .E.2d 377.**

49. The statutory child support guidelines are the expression of the legislative will regarding the calculation of child support and must be considered by any court setting child support. **O.C.G.A. § 19-6-15(b). Urquhart v. Urquhart , 2 000, 272 Ga. 548, 533 S .E .2d 80; Ehlers v. Ehlers, 1994, 264 Ga. 668, 449 S.E.2d 840.**

50. The child support guidelines apply not only to initial determinations of child support, but also to modification actions, and are the expression of the legislative will regarding the calculation of child support and must be considered by any court setting child support. **O.C. G. A. § 19-6-15(b), 19-6-19(a). Wingard v. Paris, 1999 270 Ga. 439,511 S.E.2d 167.**

SUPERSEDEAS

51. It is firmly established that judges enjoy absolute immunity from suit for all "judicial acts" unless they have acted "in the clear absence of all jurisdiction." **Stump v. Sparkman, 435 U.S. 349, 35657 (1978).**

52. A judge of any trial court or tribunal having the power to adjudge and punish for contempt shall grant to any person convicted of or adjudged to be in contempt of court a supersedeas upon application and compliance with the provisions of law as to

appeal and certiorari, where the person also submits, within the time prescribed by law, written notice that he intends to seek review of the conviction or adjudication of contempt . It shall not be in the discretion of any trial court judge to grant or refuse a supersedeas in cases of contempt . **O.C.G.A. § 5-6-13(a)**

53. On December 31, 2007, Plaintiff filed a **MOTION FOR NEW TRIAL** for **CIVIL ACTION FILE NO: 07-1-9310** in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA**.

54. The Honorable Judge Carlton L. Kell refused to grant Plaintiff Supersedeas after he filed a **MOTION FOR NEW TRIAL** for **CIVIL ACTION FILE NO: 07- 1-9310** in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA**.

55. On January 7, 2008, Plaintiff filed a **NOTICE OF APPEAL** for **CIVIL ACTION FILE NO: 07-1-9310** in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA**.

56. The Honorable Judge Carlton L . Kell refused to grant Plaintiff Supersedeas after he filed a **NOTICE OF APPEAL** for **CIVIL ACTION FILE NO: 07-1-9310** in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA**.

57. On January 7, 2008, on page 4, in a Trial Transcript prepared by Court Reporter Kimberly A. Elias on January 17, 2008 for **CIVIL ACTION FILE NO: 07-1-9310** in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA**, Plaintiff said "Okay, your Honor. Also, I have filed a motion for new trial, your Honor. And the order's currently being appealed . I filed a notice of appeal on the

order, your Honor.".

58. Once a written notice of intent to appeal a contempt judgment is presented to the court, enforcement of the contempt judgment must halt and the contemnor's request for a supersedas must be granted. **See Calver Enters., v. Griffin-Spalding County Hosp. Auth., 197 Ga. App. 727, 728-29, 399 S.E.2d 287, 288 (1990) ; see also Brinkley v. Flatt, 256 Ga. App. 263, 265, 568 S.E.2d 95, 98 (2002) ("Under O.C.G.A. § 5-6-13, a trial court has no discretion to grant or refuse a supersedeas in cases of contempt where the defendant has submitted an application and written notice indicating her intention to seek an appeal").**

59. An action taken respecting the judgment while the trial court is without jurisdiction is deemed a nullity and will be reversed . **Walker, 239 Ga. at 175-1 76, 236 S. E.2d at 265; Park, 229 Ga. at 769-74, 194 S. E. 2d at 468.**

UNSWORN STATEMENTS

60. Where the statements are in the self-interest of the declarant, a court has clear reason to find them insufficiently reliable to meet the necessity of hearsay rule. **O.C.G.A. §§ 24-3-1(b) . Dodd v. Scott, 2001, 250 Ga .App. 32,550 S.E.2d 444.**

61. Defendant, The Honorable Judge Carlton L . Kell, issued an **ORDER** holding the Petitioner in Contempt of Court after allowing Defendant Melvin Drukman to present self-serving statements to the Court .

62. No valid judgment could have been rendered

on unsworn statements. **O.C.G.A. § 24-9- 60. Grantham v. Grantham, 1996,224 Ga.App. 1, 479 S. E. 2d 370 reconsideration denied.**

63. Defendant, The Honorable Judge Carlton L . Kell, issued an **ORDER** holding the Petitioner in Contempt of Court after allowing Defendant Melvin Drukman to present unsworn statements to the Court.

64. On January 7, 2008, on page 4, in a Trial Transcript prepared by Court Reporter Kimberly A . Elias on January 17, 2008 for **CIVIL ACTION FILE NO: 07-1-9310** in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA**, Plaintiff said "As far as the facts, your Honor, the main issue of law that I have with the order is, I mean, there was no sworn testimony, your Honor, on the order. And I was not allowed to testify. So that's hearsay . Everything that Mr. Drukman stated and Ms . McGee stated is hearsay, and the law clearly doesn't allow that, your Honor.".

65. On January 7, 2008, on page 4 thru 5, in a Trial Transcript prepared by Court Reporter Kimberly A. Elias on January 17, 2008 for **CIVIL ACTION FILE NO: 07-1-9310** in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA**, "THE COURT" said "I don't understand what you're talking about. We had a hearing where people were sworn in and testified."

66. On January 7, 2008, on page 5, in a Trial Transcript prepared by Court Reporter Kimberly A . Elias on January 17, 2008 for **CIVIL ACTION FILE NO: 07-1-9310** in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA**, Plaintiff said "No.

They weren't sworn in, your Honor. No, they were not . No, they were not . They were not sworn in . Mr. Drukman was not sworn, nor Ms. McGee, nor was I."

## RELIEF

**DECLARATORY RELIEF**

Plaintiff incorporates herein by reference all of the facts of foregoing paragraphs 1 to 66.

Plaintiff moves this Honorable Court to issue an ORDER:

a. Declaring the **ORDER** filed on January 2, 2008 in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA** in **CIVIL ACTION FILE NO: 06-1-10115-49** by The Honorable Carlton L. Kell is void .

b. Declaring the **ORDER** filed on January 2, 2008 in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA** in **CIVIL ACTION FILE NO: 07-1-09310-49** by The Honorable Carlton L . Kell is void.

c. Declaring the **ORDER** filed on February 4, 2008 in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA** in **CIVIL ACTION FILE NO: 06-1- 101 15- 49** by The Honorable Carlton L . Kell is void.

d. Declaring the **ORDER** filed on February 4, 2008 in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA** in **CIVIL ACTION FILE NO: 07-1-09310-49** by The Honorable Carlton L . Kell is void.

**INJUNCTIVE RELIEF**

Plaintiff incorporates herein by reference all of the facts of foregoing paragraphs 1 to 66.

Plaintiff moves this Honorable Court to issue an injunction enjoining:

e. Defendant Melvin Drukman from presenting statements to the Court, that he has no direct knowledge of, as FACT, in order to obtain a Court Order to deprive Plaintiff Jason F . McGee of Equal Protection Under The Law.

f. Defendant Melvin Drukman from presenting statements to the Court, that he has no direct knowledge of, as FACT, in order to obtain a Court Order to awarding him Attorney Fees .

g. Defendant The Honorable Judge Carlton L . Kell from making derogatory comments to any Pro Se party because the Court was asked to issue verbal rulings on questions of Law .

h. Defendant The Honorable Judge Carlton L. Kell from depriving Pro Se parties Equal Protection under the Law.

**COMPENSATORY DAMAGES**

Plaintiff, Jason F. McGee, incorporates herein by reference all of the facts of foregoing paragraphs 1 to 66.

Plaintiff moves the Court to issue an ORDER requiring:

i. Defendant Melvin Drukman to pay Plaintiff all monies collected from Plaintiff in **CIVIL ACTION FILE NO: 07-1-9310** in **THE SUPERIOR COURT OF COBB COUNTY GEORGIA**.

j. Awarding Plaintiff his costs of litigation .

k. Issue other relief as this Court deems appropriate and just.

**AD DAMNUM CLAUSE**

Based upon the foregoing pleaded facts, plaintiff moves this Honorable Court to issue an ORDER awarding Plaintiff compensatory and punitive damages in the amount of Three Million Dollars ($3,000,000.00) from Defendant Melvin Drukman.

Respectfully Submitted,
Dated: April 16, 2008

/S/_____
Jason F. McGee, Pro Se

## APPENDIX 4

Jay C. Stephenson
**CLERK OF THE SUPERIOR COURT**
**COBB JUDICIAL CIRCUIT**

Elva P. Dornbusch
**CHIEF DEPUTY CLERK**

January 10, 2008

Jason F. McGee
2152 Caneridge Drive SW
Marietta, GA 30064

In Re: Civil Action File No.: **07-1-9310-49**
Notice of Appeal Filed: **January 7, 2008**

**Jason F. McGee**, Appellant
-v- **Debbie D. McGee**, Appellee

Dear Mr. McGee;

The document received from you entitled NOTICE OF APPEAL filed on January 7, 2008 does not contain sufficient information to prepare the record for an appeal. A certificate of service showing the complete address of the Appellee's attorney served must be filed in order for your appeal to be accepted by the Higher Court. Please submit this document so that costs can be calculated and sent out to you.

You also filed a Motion For New Trial on January 4, 2008. Preparation of the appeal record cannot be started until this order is ruled on and until costs

are paid.

If you have any questions, please contact me. Thank you for your prompt attention in this matter.

Sincerely,

/S/_____
Katti Lanham
Appeals Clerk, Cobb Superior Court
770 528-1339

## APPENDIX 5

**IN THE SUPERIOR COURT OF COBB COUNTY STATE OF GEORGIA**

DEBBIE D. MCGEE,
Plaintiff,
v.
JASON F. MCGEE
Defendant,

**CIVIL ACTION FILE NO. 07-1-09310-49**

**NOTICE OF APPEAL**

Notice is hereby given that Jason F. McGee Defendant in the above matter hereby appeals to the Court of Appeals of Georgia from the ORDER of the trial court entered on the 2nd day of January, 2008.

The clerk shall omit nothing from the record on appeal.

A transcript of evidence and proceedings will be filed for inclusion in the record on appeal. The Court of Appeals, rather than the Supreme Court, has jurisdiction of this appeal because the issue involved is Contempt and appeals of such cases are not reserved to the Supreme Court of Georgia pursuant to Article VI, Section VI, Paragraphs II and III of the Constitution of the State of Georgia.

Respectfully submitted,

/S/ Jason F. McGee
Pro Se

## APPENDIX 6

**IN THE SUPERIOR COURT OF COBB COUNTY STATE OF GEORGIA**

DEBBIE D. MCGEE,
Plaintiff,
v.
JASON F. MCGEE
Defendant,

**CIVIL ACTION FILE NO. 07-1-09310-49**

**MEMORANDUM IN SUPPORT OF MOTION FOR NEW TRIAL DOCKETED ON JANUARY 4, 2007**

1. Plaintiff moves this Honorable Court to enter an Order granting a New Trial, stating in support:

**ISSUE**

2. The issue for the court is whether the Court has the Authority to hold the Defendant in Willful Contempt of the Court's Order for Child Support without any Admissible Evidence?
3. Did the Court have the Authority to require the Defendant to pay $4,924 .50 to Plaintiff, DEBBIE D. MCEE, by 5:00 PM on December 27, 2007 without any Admissible Evidence?
4. Does the Court have the Authority to require the Defendant to Pay the Plaintiff s attorney fees when the Attorney made statements in his own self-interest?

**ARGUMENT**

4. The ORDER is contrary to law.

5. "[C]hild support guidelines apply not only to initial determinations of child support, but also to modification actions, and '" ...must be considered by any court setting child support ." [Cit .]'" Wingard v. Paris, 270 Ga. 439, 440 (511 SE2d 167) (1999). The trial court's failure to apply the child support guidelines prior to issuing an Order for Child Support constitutes another basis for reversal of the judgment.
6. Child support guidelines are mandatory and must be considered by any trier of fact setting amount of child support. O.C.G.A. § 19-9-1(b, c). Gordy v. Gordy, 2000, 246 Ga.App. 802, 542 S.E.2d 536; Franz v. Franz, 1997, 268 GA. 465, 490 S.E.2d 377.
7. The statutory child support guidelines are the expression of the legislative will regarding the calculation of child support and must be considered by any court setting child support. O.C.G.A. § 19-6-15(b). Urquhart v. Urquhart, 2000, 272 Ga. 548, 533 S.E.2d 80; Ehlers v. Ehlers, 1994, 264 Ga. 668, 449 S.E.2d 840.
8. The child support guidelines apply not only to initial determinations of child support, but also to modification actions, and are the expression of the legislative will regarding the calculation of child support and must be considered by any court setting child support. O.C.G.A. § 19-6-15(b), 19-6-19(a). Wingard v. Paris, 1999 270 Ga. 439, 511 S.E.2d 167.
9. No valid judgment could have been rendered on unsworn statements. O.C.G.A. § 24-9-60. Grantham v. Grantham, 1996, 224 Ga.App. 1,

479 S.E.2d 370 reconsideration denied

10. Where the statements are in the self-interest of the declarant, a court has clear reason to find them insufficiently reliable to meet the necessity of hearsay rule. O.C.G.A. §§ 24-3-1(b). Dodd v. Scott, 2001, 250 Ga.App. 32, 550 S.E.2d 444.
11. Generally burden of proof is on plaintiff and remains with him throughout trial. Central of Georgia Ry. Co. v. Barnett, 1926, 35 Ga.App. 528, 134 S.E.126.

12. The ORDER is contrary to the evidence
13. The Court issued an ORDER requiring the Defendant to pay Child Support without applying the child support guidelines. **FINAL ORDER REINSTATING CHILD SUPPORT**
14. Defendant filed a **MOTION TO VACATE AND SET ASIDE JUDGMENT** which the Court denied.
15. The Court issued an **ORDER** based on unsworn statements of the Plaintiff's Attorney.
16. The Court relied on the statements of the Plaintiffs Attorney since the attorney took an oath upon admission to bar and was deemed to speak truth and to be bound by his statements in open court. **Thomas v. Scott, 1996 221 Ga. 875, 148 S.E.2d 300**
17. The Court refused to allow the Defendant to enter sworn testimony challenging the statements of the Plaintiffs Attorney.

18. The Plaintiff's Attorney made it clear to the Defendant **"that only testimony by a party to the case is considered factual and that anything said by counsel is not considered as fact by the Court." EXHIBIT K PAGE 2**
19. The Court issued an **ORDER** based on unsworn statements of the Plaintiff.
20. The Court issued an **ORDER** requiring the Defendant to pay the Plaintiff's Attorney Fees after allowing the Plaintiffs Attorney make hearsay statements to justify the fees .
21. The Court Abused its Discretion in relaying on hearsay to issue an **ORDER**.

22. The ORDER is strongly against the weight of the evidence.
23. The Plaintiff did not meet the burden of proof to justify the **ORDER** issued by the Court.
24. The Defendant provided rebuttal proof that he had paid Child Support. **EXHIBIT A EXHIBIT B EXHIBIT C**
25. The Defendant provided rebuttal proof regarding the children's health insurance. **EXHIBIT D**
26. The Defendant provided rebuttal proof regarding the life insurance policy . **EXHIBIT I EXHIBIT J**
27. If the Court does not Vacate its **ORDER**, the Defendant will be denied equal protection under the laws. **West's Ga. Const. Art. I § I, ¶ II, see U.S.C.A. Const.**
28. The Court has a duty to provide equal

> protection under the laws to each party in a complete and impartial manner . **West's Ga. Const. Art. I, § I, ¶ II, see U.S.C.A. Const. Amend. 14.**

WHEREFORE plaintiff Jason F. McGee moves the Court to enter an Order granting his **MOTION FOR NEW TRIAL**.

Plaintiff objects to the Court allowing the Plaintiff to tell the court material facts that were not supported by any evidence.

Plaintiff Jason F. McGee moves the Court to Vacate its **ORDER** so that Defendant Jason F. McGee will not be denied equal protection under the laws.

Plaintiff Jason F. McGee moves the Court to ensure that the Court's Orders are issued in a complete and impartial manner.

## APPENDIX 7

**IN THE SUPERIOR COURT OF COBB COUNTY STATE OF GEORGIA**

DEBBIE D. MCGEE,
Plaintiff,
v.
JASON F. MCGEE
Defendant,

**CIVIL ACTION FILE NO. 07-1-09310-49**

**MOTION FOR NEW TRIAL**

Petitioner, Jason F. McGee, moves this Honorable Court to set aside its **ORDER** signed on December 27, 2007 and entered on the docket on January 2, 2008, and to grant a new trial on the following grounds:

1) The ORDER is contrary to law.
2) The ORDER is contrary to the evidence.
3) The ORDER is strongly against the weight of the evidence.

Dated: January 4, 2008

/S/_____
Jason F. McGeePro Se

## APPENDIX 8

**IN THE SUPERIOR COURT OF COBB COUNTY STATE OF GEORGIA**

JASON F. MCGEE ,
PETITIONER
v. CIVIL ACTION FILE
NO. 07-1-09310-49
HONORABLE C. LATAIN KELL SR.
RESPONDENT,

**AFFIDAVIT IN SUPPORT OF MOTION FOR RECUSAL OF THE HONORABLE JUDGE KELL**

1. On Wednesday, February 6, 2008, I received a **Notice Of Special Court Date Setting** on the Letterhead of the Honorable Judge C. Latain Kell.

2. The Hearing was scheduled for Monday February 4, 2008.

3. On Monday, February 4, 2008, the Honorable Judge C. Latain Kell signed another **ORDER** in which the following words were added "Failure to clear the debts regarding the Concord Ridge property by said date will result in incarceration by the Sheriff of Cobb County without further Order of the Court and such incarceration will continue until Defendant purges himself of his contempt by bringing the mortgage, taxes and insurance on the property current by showing the Sheriff said property is no longer in arrears." **ORDER dated FEBRUARY 4, 2008**

4. It is clear to me that Judge Kell Abused his discretion to protect Attorney Melvin Drukman.

5. I suppose that the after I am Arrested the Honorable Judge Kell will deny my **MOTION FOR NEW TRIAL**.

## The Georgia Code of Judicial Conduct

**Canon 1 Judges Shall Uphold the Integrity and Independence of the Judiciary.**

An independent and honorable judiciary is indispensable to justice in our society. Judges shall participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe such standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

***Commentary:*** *Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor.* ***Although judges should be independent, they must comply with the law, including the provisions of this Code.*** *Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.*

6. I asked the Court on 4 separate occasions for Findings of Fact and Conclusions of Law. **Page 15 – 16, 37. Transcript Prepared by Beverly Bridges, CCR**

7. The law is clear.

8. When disposition of motion in nonjury case requires weighing of evidence and constitutes and adjudication on the merits, findings of fact and conclusions of law are required. **Bob Bennett Enters., Inc. v. Trust Co. Bank, 153 Ga. App. 344, 265 S.E.2d 311 (1980).**

9. The requirement of written findings of fact and conclusions of law applies to contested child custody cases under **subsection(a) of O.C.G.A. § 9-11-52. Jordan v Jordan, 179 Ga. App. 155, 345 S.E.2d 675 (1986).**

10. Subsection (a) of O.C.G.A. § 9-11-52 is mandatory in contested custody of children actions. **Couch v. Couch, 177 Ga. App. 773, 341 S.E.2d 303 (1986).**

11. Once a written notice of intent to appeal a contempt judgment is presented to the court, enforcement of the contempt judgment must halt and the contemnor's request for a supersedeas must be granted. **See Calver Enters., v. Griffin-Spalding County Hosp. Auth., 197 Ga. App. 727, 728-29, 399 S.E.2d 287, 288 (1990); see also Brinkley v. Flatt, 256 Ga. App. 263, 265, 568 S.E.2d 95, 98 (2002)** ("Under O.C.G.A. § 5-6-13, a trial court has no discretion to grant or refuse a supersedeas in cases of contempt where the defendant has submitted an application and written notice indicating her intention to seek an appeal").

12. An action taken respecting the judgment while the trial court is without jurisdiction is deemed a nullity and will be reversed. **Walker, 239 Ga. at 175-176, 236 S.E.2d at 265; Park, 229 Ga. at 769-70, 194 S.E.2d at 468.**

13. Requirements of subsection (a) are applicable to contested child custody cases. **Avery v. Avery, 234 Ga. 729, 218 S.E.2d 19 (1975); Motes v. Stanton, 237 Ga. 440, 228 S.E.2d 831 (1976); Coleman v. Coleman, 238 Ga. 183, 232 S.E.2d 57 (1977) (see O.C.G.A. § 9-11-52).**

14. Court of Appeals would review for abuse of discretion that trial court's failure to make findings of fact and conclusions of law following bench trial, where motion requesting such findings was made after judgment. **O.C.G.A. § 9-11-52(c). Vernon Library Supplies, Inc. v. Ard, 2001, 249 Ga.App. 853, 550 S.E.2d 108.**

15. Principle that findings of trial courts in nonjury trials shall not be set aside unless clearly erroneous does not apply where it appears that trial court's findings and judgment are based on error of law. **O.C.G.A. § 9-11-52(a). Scott v. Purser Truck Sales, Inc., 1991, 198 Ga.App 611, 402 S.E.2d 354.**

16. Where the trial court's order contains no recitation of the facts it found to support it conclusions, the appeal is remanded with direction that the trial judge vacate the judgment, prepare, or cause to be prepared, appropriate findings of fact and conclusions of law, and enter a new judgment thereon, after which the losing party shall be free to enter another appeal if is should wish to do so. **C &**

**H Couriers, Inc. v. American Mut. Ins. Co., 166 Ga. App. 853, 305 S.E.2d 500 (1983).**

17. When an order fails to specify clearly the findings of fact and conclusions of law, or fails to contain any such recitation, the case will be remanded with direction that the prior order be vacated and a new order containing appropriate findings and conclusions be entered. **C & H Couriers Inc. v. American Mut. Ins. Co., 166 Ga. App. 853, 854, 305 S.E.2d 500, 501 (1983); Fairburn Banking Co. v. Upton, 172 Ga. App. 81, 82, 321 S.E.2d 814, 815 (1984).**

18. The order should state not only the end result of the judge's inquiry, but the process by which it was reached. **See, e.g., In re Interest of D.L.G., 212 Ga. App. 353, 442 S.E.2d 11 (1994); Moore v. Farmers Bank 182 Ga. App. 94, 95, 354 S.E.2d 692, 693 (1987); C & H Couriers Inc. v. American Mut. Ins. Co., 166 Ga. App. 853, 305 S.E.2d 500 (1983); Woodruff v. B-X Corp., 154 Ga. App. 197, 197-198, 267 S.E.2d 757, 758 (1980)**

**Canon 3 Judges Shall Perform the Duties of Their Office Impartially and Diligently**

**B. Adjudicative Responsibilities.**

**(5)** Judges shall perform judicial duties without bias or prejudice. Judges shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socio-economic status, and

shall not permit staff, court officials and others subject to judicial direction and control to do so.

***Commentary:*** *Judges must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to their direction and control. Judges must perform judicial duties impartially and fairly. Judges who manifest bias on any basis in a proceeding impair the fairness of the proceeding and bring the judiciary into disrepute. Facial expression, body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. Judges must be alert to avoid behavior that may be perceived as prejudicial.*

19. The Honorable Judge Kell made it clear to me that he is BIASED against my PRO SE status by his comment:

20. "THE COURT: Okay. Well, explain to me why I shouldn't have you taken into custody. **And don't give me a bunch of your pro se mumbo jumbo about the legalities of it.** Tell me why you haven't made the payments I ordered you to make." **Page 8 – 9. Transcript Prepared by Kimberly A. Elias, CCR**

21. I suppose that the simple FACT that the Court Issued an **ORDER** based on a LIE told to it by Attorney Melvin Drukman would have been Irrelevant.

22. The Trial Transcripts clearly show that I was going to comply with an **ORDER** based upon False statements of Attorney Melvin Drukman or I was going to Jail.

23. The Trial Transcripts clearly show that I was going to comply with an **ORDER** based upon Misleading statements of Attorney Melvin Drukman or I was going to Jail.

**Canon 3 Judges Shall Perform the Duties of Their Office Impartially and Diligently**

**D. Disciplinary Responsibilities**

**(2)** Judges who receive information indicating a substantial likelihood that a lawyer has committed a violation of the Standards of Conduct of the State Bar of Georgia should take appropriate action. Judges having knowledge* that a lawyer has committed a violation of the Standards of Conduct of the State Bar of Georgia that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority*.

24. I accused Attorney Melvin Drukman of Lying.

25. The Honorable Judge Kell made the following statement: "Don't file pleadings in the court telling this Court that people are lying to the Court unless you have absolute proof of lying. Okay? Because that is an incredibly serious Allegation." **Page 16. Transcript Prepared by Beverly Bridges, CCR**

26. I suppose Mr. Drukman told the Court the Truth on 1st **ORDER** of the Court.

27. I suppose Mr. Drukman re-told the Court the Truth at the Compliance Hearing when he corrected certain information that he alleged in the Initial Hearing.

**Canon 3 Judges Shall Perform the Duties of Their Office Impartially and Diligently**

**E. Disqualification**

**(1)** Judges shall disqualify themselves in any proceeding in which their impartiality might reasonably be questioned, including but not limited to instances where:

***Commentary:*** *Under this rule, judges are subject to disqualification whenever their impartiality might reasonably be questioned, regardless of whether any of the specific rules in Section 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.*

*Judges should disclose on the record information that the court believes the parties or their lawyers might consider relevant to the question of disqualification, even if they believe there is no legal basis for disqualification.*

**(a)** the judge has a personal bias or prejudice

concerning a party or a party's lawyer, or personal knowledge* of disputed evidentiary facts concerning the proceeding;

28. No valid judgment could have been rendered on unsworn statements. **O.C.G.A. § 24-9-60. Grantham v. Grantham, 1996, 224 Ga.App. 1, 479 S.E.2d 370 reconsideration denied**

29. Where the statements are in the self-interest of the declarant, a court has clear reason to find them insufficiently reliable to meet the necessity of hearsay rule. O.C.G.A. §§ 24-3-1(b). **Dodd v. Scott, 2001, 250 Ga.App. 32, 550 S.E.2d 444.**

Dated: February 11, 2008

/S/_____
Jason F. McGee, Pro Se

## APPENDIX 9

**IN THE SUPERIOR COURT OF COBB COUNTY STATE OF GEORGIA**

JASON F. MCGEE,
PETITIONER,

v.

**CIVIL ACTION FILE NO. 07-1-09310-49**

HONORABLE C. LATAIN KELL
RESPONDENT

**MOTION FOR RECUSAL OF THE HONORABLE JUDGE KELL**

1. Petitioner Jason F. McGee moves the Honorable Judge Kell to recuse himself from this case per Rule 25 of the Uniform Rules of the Superior Court.

2. Petitioner Jason F. McGee moves this Court to cite its Findings of Fact and Conclusions of Law on the Petitioner's **MOTION FOR RECUSAL OF THE HONORABLE JUDGE KELL** per subsection(a) of O.C.G.A. § 9-11-52.

3. Petitioner Jason F. McGee states that a strong inference can be drawn that the Honorable Judge Kell has violated certain Judicial Cannons of the **Judicial Codes and Rules**.

4. Petitioner provided this Court written notice of intent to appeal the contempt judgment, the enforcement of the contempt judgment must halt and the contemnor's request for a supersedeas must be granted. **See Calver Enters., v. Griffin-Spalding County Hosp. Auth., 197 Ga. App. 727,**

**728-29, 399 S.E.2d 287, 288 (1990); see also Brinkley v. Flatt, 256 Ga. App. 263, 265, 568 S.E.2d 95, 98 (2002) ("Under O.C.G.A. § 5-6-13, a trial court has no discretion to grant or refuse a supersedeas in cases of contempt where the defendant has submitted an application and written notice indicating her intention to seek an appeal").**

5. Petitioner Jason F. McGee states that the Honorable Judge Kell deprived the Petitioner of Equal Protection Under The Law by issuing an **ORDER** based upon False Allegations of Attorney Melvin Drukman.

6. Petitioner Jason F. McGee states that the Honorable Judge Kell issued an **ORDER** holding the Petitioner in Contempt of Court after allowing Attorney Melvin Drukman to present self-serving statements to the Court. **O.C.G.A. §§ 24-3-1(b). Dodd v. Scott, 2001, 250 Ga.App. 32, 550 S.E.2d 444.**

7. Petitioner alleges that the Honorable Judge Kell made clear errors of Law.

8. Petitioner Jason F. McGee alleges that he no longer expects to receive a Fair Trail under the Honorable Judge Kell based on prejudicial statements made by the Honorable Judge Kell.

9. Petitioner Jason F. McGee moves the Honorable Judge Kell to suspend his previous **ORDER** dated February 4, 2008 until his **MOTION FOR NEW TRIAL** has been granted or denied. **Walker, 239 Ga. at 175-176, 236 S.E.2d at 265; Park, 229 Ga. at 769-70, 194 S.E.2d at 468.**

WHEREFORE, Petitioner prays:

a. The Honorable Judge Kell will recuse himself from taking any actions that will deprive the Petitioner of all Rights Guaranteed by the Georgia Constitution and the U.S. Constitution.

b. The Honorable Judge Kell will recuse himself to prevent any appearance of manifest bias or prejudice because the Petitioner appeared Pro Se before him.

Dated: February 11, 2008

/S/_____
Jason F. McGee, Pro Se

## APPENDIX 10

**IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA**

JASON F. MCGEE,
PETITIONER,

v.

CIVIL ACTION
FILE NO. 06-1-10115-49

HONORABLE C. LATAIN KELL
RESPONDENT,

**AFFIDAVIT IN SUPPORT OF MOTION FOR RECUSAL OF THE HONORABLE JUDGE KELL**

**MOTION TO VACATE AND SET ASIDE JUDGMENT**

1. Mr. Drukman was caught by surprise after the Honorable Judge Stoddard refused to grant the Motion For Contempt filed by Debbie McGee.

2. I listened as Mr. Drukman told the Honorable Judge Stoddard that he was never served a copy of the Motion.

3. I listened as Mr. Drukman told the Honorable Judge Stoddard that he had never seen the Motion.

4. The Honorable Judge Stoddard was gracious enough to print Mr. Drukman a copy of the Motion that he claimed that he had never seen.

5. I'm sure that Attorney Carin Burgess would disagree with Mr. Drukman's recollection about not

having seen her **MOTION TO VACATE AND SET ASIDE JUDGMENT**.

6. I read the Letter Mr. Drukman wrote in response to a Complaint that I filed with the State Bar of Georgia referencing the Motion that he told Judge Stoddard that he had never seen.

7. The Record clearly reflects that Attorney Melvin Drukman will make untrue statements both in writing and in the Courtroom when they are in his best interest.

8. After the Honorable Judge Stoddard rejected Mr. Drukman's Motion For Contempt, he filed a Response to the **MOTION TO VACATE AND SET ASIDE JUDGMENT**.

9. If Ms Burgess provided proof of service with the filing of the **MOTION TO VACATE AND SET ASIDE JUDGMENT** why didn't the Honorable Judge Kell Order her to appear in Court?

10. If Ms Burgess did not mail the **MOTION TO VACATE AND SET ASIDE JUDGMENT** to Mr. Drukman she should be held accountable.

11. If Mr. Drukman received proper notice, he waived the right to contest the Motion and the Court must rule in my favor.

12. Mr. Drukman stated "I waived service and filed an answer, Your Honor. That issue can be heard. So we can go forward." **Page 10. Transcript Prepared by Beverly Bridges, CCR**

13. If Mr. Drukman waived service, he still was not allowed to contest the **MOTION TO VACATE AND SET ASIDE JUDGMENT**. **Rudd v. Paden, 2006, 279 Ga.App. 141, 630 S.E.2d 648**

**FINANCIAL AFFIDAVIT**

14. I stated to the Court that a Financial Affidavit is required under the Uniform Rules of the Superior Court – 24.1. **Page 14. Transcript Prepared by Beverly Bridges, CCR**

15. Mr. Drukman must believe that a financial affidavit is not required if his client was unemployed. **Page 14. Transcript Prepared by Beverly Bridges, CCR**

16. The Uniform Rules of the Superior Court and Law state that a Financial Affidavit is required. **O.C.G.A. § 19-6-15. Rule 24.2 Uniform Rules of the Superior Court**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

17. The requirement of written findings of fact and conclusions of law applies to contested child custody cases under **subsection(a) of O.C.G.A. § 9-11-52. Jordan v Jordan, 179 Ga. App. 155, 345 S.E.2d 675 (1986).**

18. Subsection (a) is mandatory in contested custody of children actions. **Couch v. Couch, 177 Ga. App. 773, 341 S.E.2d 303 (1986).**

19. Requirements of subsection (a) are applicable to contested child custody cases. **Avery v. Avery, 234 Ga. 729, 218 S.E.2d 19 (1975); Motes v. Stanton, 237 Ga. 440, 228 S.E.2d 831 (1976); Coleman v. Coleman, 238 Ga. 183, 232 S.E.2d 57 (1977) (see O.C.G.A. § 9-11-52).**

**BOTTOM LINE**

20. I have no confidence that I will have Fair and Impartial proceedings under the Honorable Judge Kell.

21. I expected that I would be afforded the Rights and Privileges guaranteed by the Georgia Constitution and the U.S. Constitution.

22. If the Honorable Judge Kell had did his duty to respect and comply with the Law, there would be no point in me filing a Complaint.

23. The Honorable Judge Kell's final **ORDER** clearly shows that he has transferred his Authority to Attorney Melvin Drukman and/or the Cobb County Sheriff.

24. Instead of following the Law, the Honorable Judge Kell's actions clearly show that his Authority allows him to make the Law.

Dated: February 11, 2008

/S/_____
Jason F. McGee, Pro Se

## APPENDIX 11

**IN THE SUPERIOR COURT OF COBB COUNTY STATE OF GEORGIA**

JASON F. MCGEE,
PETITIONER,

v.

**CIVIL ACTION FILE NO. 06-1-10115-49**

HONORABLE C. LATAIN KELL
RESPONDENT,

**MOTION FOR RECUSAL OF THE HONORABLE JUDGE KELL**

1. Petitioner Jason F. McGee moves the Honorable Judge Kell to recuse himself from this case per Rule 25 of the Uniform Rules of the Superior Court.

2. Petitioner Jason F. McGee moves this Court to cite its Findings of Fact and Conclusions of Law on the Petitioner's **MOTION FOR RECUSAL OF THE HONORABLE JUDGE KELL** per subsection(a) of O.C.G.A. § 9-11-52.

3. The Law is clear:

4. Unless otherwise ordered by the judge, each party opposing a motion shall serve and file a response, reply memorandum, affidavits, or other responsive material not later than 30 days after service of the motion. **Uniform Superior Court Rule 6.2**

5. Party who fails to comply with rule requiring party who opposes a motion to file responsive material within 30 days after service of motion

waives her right to present evidence in opposition to the motion. **Rudd v. Paden, 2006, 279 Ga.App. 141, 630 S.E.2d 648**

6. Although the presence of the conditional language in rule requiring party who opposes a motion to file responsive material within 30 days after service of motion, "unless ordered by the judge," does not give the trial judge discretion regarding the period of time by which a party must respond to a motion, it does not give the court unfettered authority to excuse late filing. **Rudd v. Paden, 2006, 279 Ga.App. 141, 630 S.E.2d 648**

7. Unless otherwise ordered by the court, all motions in civil actions, including those for summary judgment, shall be decided by the court without oral hearing, except for new trail and motions for judgment notwithstanding the verdict. **Uniform Superior Court Rule 6.3**

8. At the time of filing any action for temporary or permanent child support, alimony, equitable division of property, modification of child support or alimony or attorneys fees, the filing party shall file with the Clerk of Court the affidavit specifying his or her financial circumstances in the form set forth herein and, in cases involving child support, the schedules required by O.C.G.A. § 19-6-15 (effective January 1, 2007, as thereafter amended or revised), and shall serve the same upon the opposing party. **Uniform Superior Court Rule 24.2**

9. Mr. Drukman waived his right to contest a **MOTION TO VACATE AND SET ASIDE JUDGMENT** filed by Attorney Carin Burgess by failing to respond within 30 days.

10. Petitioner alleges that the Honorable Judge Kell made clear errors of Law.

WHEREFORE, Petitioner prays:

a. The Honorable Judge Kell will recuse himself from taking any actions that will deprive the Petitioner of all Rights Guaranteed by the Georgia Constitution and the U.S. Constitution.

b. The Honorable Judge Kell will recuse himself to prevent any appearance of manifest bias or prejudice because the Petitioner appeared Pro Se before him.

Dated: February 11, 2008

/S/_____
Jason F. McGee, Pro Se

## APPENDIX 12

Mar 22 07 04:35p Melvin Drukman 404 325-9811 p.2

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

DEBBIE D. MCGEE
Plaintiff

v.

JASON F. MCGEE
Defendant

CIVIL ACTION
File No. 05-1-5011

**RULE NISI**

The foregoing Motion to Resume Custody and Child Support having been read and considered, let the same be filed and a copy served upon the Defendant in the manner provided by law. Let the Defendant show cause before this Court, on the 4th day of April 2007 at 9:30 o'clock A.M., in Courtroom E, the courthouse in Cobb County, Georgia, as to why the prayers of the Plaintiff should not be granted.

This 23rd day of March, 2007.

/S/ Jay C. Stephenson
~~Robert E. Flournoy III, Judge~~ Clerk
Cobb County Superior Court
Cobb Judicial Circuit

## APPENDIX 13

**UNITED STATES CONSTITUTION**
**AMENDMENT XIV**
**(DUE PROCESS AND EQUAL PROTECTION CLAUSE)**

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

**28 U.S.C. § 1254**

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

**28 U.S.C. § 1257**

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

**28 U.S.C. § 1331**

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws,

or treaties of the United States.

**28 U.S.C. § 1343**

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

**28 U.S.C. § 1446**

(a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed

pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.
(b) The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter. If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.
(c)

(1) A notice of removal of a criminal prosecution shall be filed not later than thirty days after the arraignment in the State court, or at any time before trial, whichever is earlier, except that for good cause shown the United States district court may enter an order granting the defendant or defendants leave to file the notice at a later time.

(2) A notice of removal of a criminal prosecution shall include all grounds for such removal. A failure to state grounds which exist at the time of the filing of the notice shall constitute a waiver of such grounds, and a second notice may be filed only on grounds not existing at the time of the original notice. For good cause shown, the United States district court may grant relief from the limitations of this paragraph.

(3) The filing of a notice of removal of a criminal prosecution shall not prevent the State court in which such prosecution is pending from proceeding further, except that a judgment of conviction shall not be entered unless the prosecution is first remanded.

(4) The United States district court in which such notice is filed shall examine the notice promptly. If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand.

(5) If the United States district court does not order the summary remand of such prosecution, it shall order an evidentiary hearing to be held promptly and after such hearing shall make such disposition of the prosecution as justice shall require. If the United States district court determines that removal shall be permitted, it shall so notify the State court in which prosecution is pending, which shall proceed no further.

(d) Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall

give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.
(e) If the defendant or defendants are in actual custody on process issued by the State court, the district court shall issue its writ of habeas corpus, and the marshal shall thereupon take such defendant or defendants into his custody and deliver a copy of the writ to the clerk of such State court.
(f) With respect to any counterclaim removed to a district court pursuant to section 337(c) of the Tariff Act of 1930, the district court shall resolve such counterclaim in the same manner as an original complaint under the Federal Rules of Civil Procedure, except that the payment of a filing fee shall not be required in such cases and the counterclaim shall relate back to the date of the original complaint in the proceeding before the International Trade Commission under section 337 of that Act.

**28 U.S.C § 1651**
(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.
(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

**28 U.S.C. § 1738**
**(FULL FAITH AND CREDIT CLAUSE)**

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

**42 U.S.C. § 1983**

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a

judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.